

PRISON SERVICE JOURNAL

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The Editorial Board wishes to make clear that the views expressed by contributors are their own and do not necessarily reflect the official views or policies of the Prison Service.

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Editorial Comment

This general edition of Prison Service Journal discusses contemporary issues and concerns, while engaging in thoughtful, in depth and evidence-based analysis of various topics of interest to our readership.

The first article focusses on prison regime. **Javier Sánchez-Díaz's** from NHS Greater Glasgow and Clyde, and **Lisa Edmondson's** from HMPPS, article focusses specifically on progression regimes. Progression Regimes in prisons in England and Wales are utilised for several groups, including men having difficulty progressing through their sentence via the usual routes, or those excluded from transferring to open prison conditions. These regimes are designed with the intention to be more enabling than traditional regimes, providing individuals with opportunities that more closely reflect life in the outside community. The article presents an examination of the behaviour of residents in progressive regimes in contrast to their behaviour in more traditional regimes; specifically, the study looked at positive and negative behaviour record entries, incidents of violence and self-harm, and proven adjudications.

Ministry of Justice and HMPPS staff, **Jo Greenfield, Flora Fitzalan Howard, Dr Helen Wakeling, Nicola Cunningham, Scott Lane** and **Jayne Kirkpatrick** worked collaboratively to complete an exploratory piece of research at a Male Adult Category C Prison — HMP Buckley Hall. Their research tested whether a new process and a template had the potential to change staff practices when replying to prisoner complaints. The study was based on the body of evidence on the benefits of procedural justice (PJ) and as part of this research they developed a tool that aimed to overcome the 'evidence to practice' gap that presents such a challenge in implementing and embedding evidence-based practice. The research findings reported that the proof-of-concept approach was beneficial and there was evidence that showed there was potential to increase the use of PJ within complaint responses by utilising a specially designed support tool for staff. The findings also identified some unintended consequences, but nevertheless, the authors advocate for further and more rigorous testing.

During the last two years, The European Prison Rules (EPR) (2020) have placed increased emphasis on the role of inspection and monitoring in European prisons. In their article **Dr Sarah Curristan** and **Dr Mary Rogan** both from universities in Dublin, report on the launch of the Office of the Inspector of Prisons, Inspection Framework for Prisons in Ireland. The Framework sets out five explicit areas by which prisons will be evaluated. This timely research documents the

findings of empirical research that included interviews with prison managers in the Irish prison system. The study captures their experiences of oversight and examined how engagement with inspection is experienced on the ground by prison managers. The authors analysed the way inspections carried out by the Office of the Inspector of Prisons were perceived by staff, staff attitudes towards the inspection process, and the different ways in which oversight obligations are understood as part of managerial work. The findings identify concerns about an area of inspection that is generally overlooked — the additional managerial responsibility of oversight through inspection. Their discussion also highlights ways in which trust could be bolstered through the inspection process to strengthen and improve engagement with this oversight body.

The question of who is to blame for deaths in custody is asked every time a person dies in prison. However, the role prisons play in the untimely deaths of prisoners is not straightforward, ergo deaths in prison stir a range of emotions for all involved including bereaved families, prisoners, prison staff and investigators. **Dr Phillipa Tomczak's** article reports her findings from a project collaboration between the University of Nottingham and the Prisons and Probation Ombudsman. The project involved interviews with diverse stakeholders in England and Wales, although the present article focusses specifically on the experience of Coroners. The article sheds light on the under-researched experiences of this group, examining their perspectives on how the PPO seeks to effect change in prisons following a death, whether these actions had the intended effects, and if and how the PPO adjusts its actions to better effect change.

Dr Kirsty Deacon's study within the Scottish Prison Service, provides an insight into punishment within the familial context. The article focusses on family relationships where both members are serving sentences simultaneously. She discusses relationships in terms of care in the familial context, highlighting the duality of identities being a prisoner and a family member of a prisoner. These dual identities have not generally been considered in prior research of prisoner experience.

Ariane Amado's from the National Centre for Scientific Research (CNRS) in France, article introduces us to the dilemma that surrounds prisoners' access to assisted reproduction. She examined the academic literature on assisted reproduction and the policy guidance that exist in three countries — France, Belgium and the UK, illuminating the gap between the common principles of Family Law and their application

to the prison environment. This article explores the ethical and moral questions that arise, while providing insights into the obstacles that prisoners face when wanting recourse to assisted reproduction.

The final article brings together practitioners and researchers **Dr Lucy Baldwin** from De Montfort University, Leicester, **Katia Parent** and **Becky Wray** HMPPS social workers, and **Jo Mulcahy** from Prison Advice and Care Trust (PACT). Their article discusses the role of social workers in women's prisons, which stems from a three-year pilot project that involved two Social Workers being placed in two prisons for women in the UK. The article also reflects on the first year of the Social Worker pilot, highlighting the impact and outcomes of the project, and supports recommendations for the project to be formally adopted and extended to other women prisons.

We are keen to incorporate a range of contributions, collaborations, and views in the PSJ. Our book reviews are intellectually honest and independent. In this edition, we have three book reviews, the first two reviews are of the same book: *Understanding the Educational Experiences of Imprisoned Men: (Re)Education*, by Helen Nichols was reviewed by **Angelique Mulholland** a Doctoral researcher at

University College London and **Glenn** a life sentenced prisoner at HMP Berwyn. The book explores how adult male prisoners interpret and give value to their experiences of education, presenting an opportunity to consider how education can be beneficial to prisoners, including and beyond the enhancement of employability skills. Both reviewers recommend this book for prison practitioners, academics interested in the field of criminology, social justice, and policy makers. The *honest politician's guide to prisons and probation*, by Roy King and Lucy Willmott provides a detailed historic account of policy and legislation changes over a 30-year period, combining commentary from those intimately involved in decision making and implementation of policy and legislation. This book was reviewed by **Dr Jamie Bennett** Chief Strategy Officer at the Youth Justice Board, he described this book as 'fascinating'.

The Prison Service Journal continues to offer a platform for practitioners, academics, and others with an interest to engage with the contemporary and enduring challenges of prison life, with the aim to examine those issues from both a theoretical perspective, but also encompassing the reality of the everyday experiences of those who live and work in prisons.

The Impact of a Progression Regime on Observed Behaviour Indicators

Javier Sánchez-Díaz is a Child and Adolescent Therapist at NHS Greater Glasgow and Clyde, and **Lisa Edmondson** is a Chartered and Registered Forensic Psychologist in HM Prison and Probation Service's (HMPPS) Psychology Service.

Progression Regimes (PRs) were initially developed in prisons in England and Wales for male indeterminate sentenced prisoners who were: (a) excluded from open conditions; (b) serving the recall period of their licence in custody; or (c) having difficulty progressing through their sentence via the usual routes. In April 2019, the Indeterminate Sentence Prisoners Progression Board extended the PRs admission criteria to include individuals who are yet to complete all recommended offending behaviour programmes and/or interventions, and those with some current behavioural issues. Upon further consultation, this was further expanded to include Life sentenced prisoners who were within four years of their tariff expiry, and Extended Determinate Sentence prisoners.¹²

The regime at these specialist units comprises three stages of progression and incorporates the use of Enhanced Behaviour Monitoring (EBM). EBM processes are a mechanism for consistently monitoring risk-related behaviour demonstrated by individuals. They do not assess risk but provide a description of current risk behaviours, which helps inform other existing risk assessment systems. Prisoners may progress to the next stage of the regime upon the positive review of their EBM case management indicators. PRs aim to provide residents with opportunities that are meant to reflect life in the community in order to build evidence to inform the Parole Board process for recommendations. In addition, residents are allocated a Prison Offender Manager, Community Offender Manager, and Prison key worker on admission.

Post-tariff prisoners tend to be prioritised over those who are pre-tariff, at present. However, they are required to meet the suitability criteria as specified on the HMPPS Progression Regime Policy Framework.³ Prisoners must show a willingness to engage in an approach which requires high levels of personal responsibility, and where they are expected to actively address their offending-related behaviour.

A set of success measures for PRs was published in January 2019. This was followed by an Equality Analysis. All PRs have been devised with inclusion in mind. They are environments which promote inclusion of prisoners who consider themselves to meet any of the protected characteristics as defined in the Equality Act 2010. The measures were further reviewed in September 2019 by the Indeterminate Sentence Operational Support (ISOS) in consultation with project staff and national HMPPS Psychology Services.

The present study aims to contribute to the internal HMPPS evaluation of PRs, as recommended by the ISOS group following the September review of success measures, by developing appropriate and valid measures of behaviour change.

Literature Review

Prison behaviour studies

Previous studies on prison behaviour have mainly focussed on a number of quantified variables such as aggression and violence, towards others and oneself,^{4,5} and instances of drug-taking behaviour.⁶ Slade's research on the prevalence of dual harm in

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2. HMPPS. (2020). *A review of success measures within Progression Regimes*. Indeterminate Sentence Operational Support (ISOS), Ministry of Justice.
3. HMPPS. (2019) *HMPPS Incentives Policy Framework*. <https://www.gov.uk/government/publications/incentives-policy-framework>
4. Trammell, R. (2012) *Enforcing the convict code: Violence and prison culture*. Lynne Rienner Publishers.
5. Power, J., & Brown, S. (2010) *Self-injurious behaviour: A review of the literature and implications for corrections*. Correctional Service of Canada.
6. Connor, D., & Tewksbury, R. (2016) Inmates and prison involvement with drugs: Examining drug-related misconduct during incarceration. *Journal of Contemporary Criminal Justice*, 32(4), 426-445.

prisons, showed that up to 42 per cent of prisoners who assaulted others in prison, would also engage in self-harm behaviour, and vice versa.⁷ A strong association has also been reported between substance use and non-suicidal self-injury amongst men in custody, especially amongst individuals with a history of intravenous drug abuse.⁸ Carpentier et al., in their systematic review of 13 international studies, found that the prevalence of substance misuse and dependence amongst male prisoners to be between 10 per cent and 48 per cent.⁹ Results from random Mandatory Drug Testing (rMDTs) in prisons in England and Wales in 2019/2020 showed that the percentage of positive results from rMDTs for drugs other than psychoactive substances (PS) remained at a similar level to the previous two years at 10.5 per cent. Only 4.3 per cent of rMDTs were positive for PS, down from 12.9 per cent in the year ending March 2018 and 9.0 per cent in the year ending March 2019.¹⁰

How these behaviours are explained in terms of the demographics of the population has captured the interest of researchers in the field. Over the last decade, several studies have been conducted on prison interpersonal violence and sex, self-inflicted violence and sex, prison violence and age, and prison violence and cultural background. For example, women have been found to display less violence than men in the prison environment.¹¹ Motivations for self-harm may also vary between sex; some research has suggested that while

this behaviour by men may be an expression of anger or means to obtain external rewards, the function of self-harming behaviours by women may relate more to relational motivations, such as breakdowns in relationships, lack of social support, and a sense of worthlessness.¹² Desistance and associated observed behaviours have been found to increase with age.¹³ Further, prisoners in ethnic minority groups, and those from lower educational backgrounds, have been found more likely than other individuals to display rule-breaking behaviours.¹⁴

The physical condition of the prison environment and its management have also been the subject of extensive research. Studies have found that the perceived quality of prison climate affects the level at which these types of misconduct are present.¹⁵ When considering such associated risk factors with the likelihood of desistance pre- and post-release, Ellis and Bowen found that desistance from negative prison behaviours occurs in more enabling environments.¹⁶

A positive prison environment has shown to be related to positive outcomes in many aspects associated with prisoners' wellbeing, motivation to treatment, and sustainable change.

Enabling environments

The conditions of confinement and its impact on the wellbeing and behaviour of prisoners has attracted the interest of the research community in recent times.¹⁷ A positive prison environment has

shown to be related to positive outcomes in many aspects associated with prisoners' wellbeing, motivation to treatment, and sustainable change.¹⁸

7. Slade, K. (2018) Dual harm: an exploration of the presence and characteristics for dual violence and self-harm behaviour in prison. *Journal of criminal psychology*, 8(2), 97-111.
8. Stewart, A., Cossar, R., Dietze, P., Armstrong, G., Curtis, M., Kinner, S., & Stoové, M. (2018) Lifetime prevalence and correlates of self-harm and suicide attempts among male prisoners with histories of injecting drug use. *Health & Justice*, 6(1), 1-9.
9. Carpentier, C., Royuela, L., Montanari, L., & Davis, P. (2018). The global epidemiology of drug use in prison. *Drug use in prisoners: Epidemiology, implications, and policy responses*, 17-41.
10. HM Prison and Probation Service. (2020). *HMPPS Annual Digest 2019/20*. Ministry of Justice.
11. Harer, M., & Langan, N. (2001) Gender differences in predictors of prison violence: Assessing the predictive validity of a risk classification system. *Crime & Delinquency*, 47(4), 513-536.
12. Smith, H., & Power, J. (2014) Themes underlying self-injurious behavior in prison: gender convergence and divergence. *Journal of Offender Rehabilitation*, 53(4), 273-299.
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15. Kelly, C., & Welsh, W. (2016). Examining treatment climate across prison-based substance abuse treatment groups. *Substance use & misuse*, 51(7), 902-911.
16. Ellis, S., & Bowen, E. (2017). Factors associated with desistance from violence in prison: an exploratory study. *Psychology, Crime & Law*, 23(6), 601-619.
17. Liebling, A., Laws, B., Lieber, E., Auty, K., Schmidt, B., Crewe, B., & Morey, M. (2019) Are hope and possibility achievable in prison? *The Howard Journal of Crime and Justice*, 58(1), 104-126.
18. van Ginneken, E., Palmen, H., Bosma, A., Nieuwbeerta, P., & Berghuis, M. (2018) The Life in Custody Study: The quality of prison life in Dutch prison regimes. *Journal of Criminological Research, Policy and Practice*, 4(4), 253-268. <https://doi.org/10.1108/JCRPP-07-2018-0020>

Several regime domains have been identified through the existing literature to impact on the development and promotion of positive prison behaviour, such as autonomy, safety and order, relationships, a sense of purpose, and access to services. Van der Kaap-Deeder et al. in their study of prison life found that prisoners afforded a greater degree of autonomy and decision-making presented as more satisfied and rated their perceived quality of the prison regime more positively.¹⁹ Safety, order, and an environment free from the threat of violence and victimisation have been found to increase the quality of prison life and, in turn, to improve custodial behaviour.²⁰ Staff-prisoner relationships have also been considered a key determinant of the quality of prison life; these relationships have been found to impact on prisoners' experiences and prison behaviour.²¹

Further, research has found that affording prisoners a sense of purpose by facilitating their engagement in meaningful activities, during which they can learn or practice skills useful for release, is associated with improved behaviour and increased perceptions of quality of life while in custody.²²

Finally, the ability of prisoners to access internal and external services has been associated with the development of positive prison climates.²³ The accumulated evidence on 'what works' when addressing prison behaviour has led to the differentiation in regimes for special groups of convicted prisoners in English and Welsh prisons or those whose needs were no longer met by mainstream regimes.

Safety, order, and an environment free from the threat of violence and victimisation have been found to increase the quality of prison life and, in turn, to improve custodial behaviour.

Success measures

Measuring prison performance and prison behaviour are difficult tasks.²⁴ HMPPS publishes Performance Ratings based on Service Delivery Requirements annually.²⁵ These indicators include variables such as reduction of prison violence, the prevention of incidents of self-harm, and the delivery of offending behaviour programmes, a reduction in drug use within prisons, uptake of services, and the provision of purposeful activities for prisoners, amongst others.

Traditionally, the assessment of prison life and climate and evaluation of what works on addressing prison behaviour indicators have been based on qualitative research.²⁶ However, their methodology has generated contradictory results. On reviewing the use of structured questionnaires for assessing prison climate, Tonkin found growing evidence that some questionnaire-based measures can provide a reliable and valid assessment of the social climate in secure settings.²⁷ However, Steiner and Wooldredge also found evidence to suggest that prisoners' self-report is not always consistent with that of official accounts.²⁸ To better

understand the influence that prison regimes may have on prison behaviour, researchers have argued that more emphasis needs to be placed on conducting evaluations that link forensic practice to general theories of crime and desistance.²⁹

19. van der Kaap-Deeder, J., Audenaert, E., Vandeveld, S., Soenens, B., Van Mastrigt, S., Mabbe, E., & Vansteenkiste, M. (2017) Choosing when choices are limited: The role of perceived afforded choice and autonomy in prisoners' well-being. *Law and Human Behavior*, 41(6), 567.
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25. HMPPS. (2021). *Prison and Probation Performance Statistics*. Ministry of Justice. <https://www.gov.uk/government/collections/prison-and-probation-trusts-performance-statistics>
26. Jewkes, Y. (2014) An introduction to "doing prison research differently". *Qualitative Inquiry*, 20(4), 387-391.
27. Tonkin, M. (2016) A review of questionnaire measures for assessing the social climate in prisons and forensic psychiatric hospitals. *International journal of offender therapy and comparative criminology*, 60(12), 1376-1405.
28. Steiner, B., & Wooldredge, J. (2014) Comparing self-report to official measures of inmate misconduct. *Justice Quarterly*, 31(6), 1074-1101.
29. Steiner, B., Butler, H., & Ellison, J. (2014) Causes and correlates of prison inmate misconduct: A systematic review of the evidence. *Journal of Criminal Justice*, 42(6), 462-470.

Research Questions

A number of studies have found that prison climate and enabling environments have a significant effect on observed prison behaviour.³⁰ Furthermore, previous research has found that demographic and individual characteristics, such as age, can influence observed behaviour.³¹ Under these assumptions, the present study aimed to answer the following research questions:

Hypothesis 1: the type and prevalence of observed behaviour indicators vary after individuals are transferred from ordinary location onto the PR.

Hypothesis 2: this variation in observed behaviour indicators cannot be explained by other independent variables such as age or type of sentence served.

The methodology used for the study was based on a quantitative design which included the use of secondary data only, as already accessible and freely available on the National Offender Management Information System (NOMIS). The HMPPS NOMIS database contains personal details such as prisoners’ age group, offence, sentence, and case note information. These case notes contain observations of prison behaviour, such as breaches of discipline. Prison staff in PRs are trained in the recording of such

information and adhere to strict security-specific guidelines under a forensic risk factor-focused approach.³²

Method

Participants

The initial sample of participants comprised 96 prisoners, between the ages of 27 and 63, all past or current residents within one PR that operate around the country. These PR residents were either serving a Life sentence, an Indeterminate for Public Protection sentence (IPP) or an Extended Determinate sentence (EDS), and at some point during their sentences would have experienced trouble progressing towards release. Individuals were excluded if they had resided in the PRs for less than six months, or when their residence coincided with the national Covid-19 pandemic lockdown (announced on 23rd March 2020).

The final sample consisted of 59 male prisoners. 30.5 per cent of the sample was under 35 years old, 45.8 per cent aged 35 to 50, and 23.7 per cent over 50. 35.6 per cent of prisoners were serving a Life sentence, 55.9 per cent an IPP sentence, and the remaining 8.5 per cent an EDS (see Table 1).

Table 1: Frequencies and percentages for participant demographic variables

	Sample (N = 59)	Percent (per cent)
Age		
Under 35	18	30.5 per cent
35 to 50	27	45.8 per cent
Over 50	14	23.7 per cent
Sentence		
Life	21	35.6 per cent
Imprisonment for Public Protection	33	55.9 per cent
Extended Determinate Sentence	5	8.5 per cent

Ethical Approval

Permission to conduct this research was obtained from the PR Prison Manager on 10th August 2020, with the final ethical approval for the research granted by HMPPS National Research Committee on 25th September 2020. The following ethical guidelines were followed: The Prison Service Instruction on Research Applications; the Health and Care Professional Council Standards of Conduct, Performance and Ethics, and the

British Psychological Society Code of Ethics and Conduct.

Materials and Procedures

Measures

Five measures, or observed behaviour indicators, and the demographic characteristics of age and type of sentence were used in light of the existing evidence,

30. Kordowicz, M. (2018) *The Perceived Impact of the Enabling Environments Programme within HMPPS Settings: A Qualitative Evaluation*. Royal College of Psychiatrists.
31. Whiteside, E., & Bond, C. (2017) Understanding disruptive behaviour in the juvenile prison estate. *Journal of forensic practice*, 19(2), 162-170.
32. Ministry of Justice. (2016). Prison National Offender Management Information System (p-NOMIS) and Inmate Information System (IIS). Unpublished.

which supports their reliability and validity in the assessments of prison life and association with desistance pre- and post-release.

Officially recorded secondary data was used, gathered electronically, for reasons of economy and speed. This data included the periods of six months pre- and six months post-arrival onto the PR. The datasets did not allow discrimination between some behaviours, such as incidents of substance misuse, as these are normally recorded under a range of different indicators such as adjudications or negative behaviour entries.

Dependent variables (DVs).

Adjudications. Adjudications are part of the prison disciplinary system. They are regulated by Rule 51 of the Prison Rules 1999. Incidents of violence and instances of drug misuse, for example, are covered by the rules.

Negative and positive behaviours. As recorded on NOMIS case notes by HMPPS staff or those undertaking work on their behalf in compliance with HMPPS Incentives Policy Framework 2019.

Self-harm. The National Collaborating Centre for Mental Health’s broad definition of self-harm has been used to define this prison behaviour indicator. Self-harm is defined as ‘self-poisoning or self-injury, irrespective of the apparent purpose of the act.’ It includes both

suicide attempt and non-suicidal self-injury, and self-harm by substance abuse.³³

Violence. Incidents of violence include actual and direct violence perpetrated against both, staff, and fellow prisoners. It does not count for the use of threats of violence, attempted violence, violence against oneself, or self-harm.

Independent variables (IVs).

Demographic factors. As discussed in the literature review, some demographic factors have been found to be significantly associated with observed custodial behaviour indicators, reoffending rates, and treatment effectiveness.³⁴ In the present study, the individual characteristics of age and type of sentence were selected as factors that may affect prison behaviour. For the analysis, the variable of age was categorised as ‘under 35’, ‘35-50’, and ‘over 50’. Sentence type was categorised into ‘Life’, ‘IPP’, and ‘EDS’.

Analysis

The analysis was performed using the Statistical Package for the Social Sciences (SPSS), version 24. Table 2 shows the sample’s means scores and standard deviations of the scale variables.

Table 2: Sample means scores and standard deviations of the scaled variables

	Mean	SD
Six months before the progressive move onto the PR		
Adjudication	1.20	1.96
Negative behaviour	3.31	4.79
Positive behaviour	2.46	2.87
Self-harm	0.20	0.61
Violence	0.65	0.50
Six months after the progressive move onto the PR		
Adjudication	0.56	1.02
Negative behaviour	1.36	1.94
Positive behaviour	7.69	6.01
Self-harm	0.15	0.55
Violence	0.10	0.36

Checks were carried out for homogeneity of variance, skewness and kurtosis, and outliers. As the data did not meet parametric assumptions for normal distribution, non-parametric analyses were conducted.

The data met the assumptions of randomness and independence required for non-parametric tests.

Sign tests were used to compare the PR residents’ median scores of each one of the scales on the six-

33. National Collaborating Centre for Mental Health (UK). (2004) Self-harm: the short-term physical and psychological management and secondary prevention of self-harm in primary and secondary care. British Psychological Society. <https://pubmed.ncbi.nlm.nih.gov/21834185/>

34. Mooney, J., & Daffern, M. (2015) The relationship between aggressive behaviour in prison and violent offending following release. *Psychology, Crime & Law*, 21(4), 314-329.

month periods before and after their progressive move to the PR; Kruskal-Willis tests were used to compare the prisoners' mean rank scores of each of the scales in relation to their individual characteristics, six months into their progressive move onto the PR; Spearman's rank-order correlations were performed to examine the degree of association between the criterion and predictor variables.

Results

Variation in type and prevalence of observed behaviour pre-post PR

Overall, there was a decrease in the number of adjudications, negative behaviour, self-harm, and

incidents of violence in the six months following the prisoners' progressive move to the PR. The number of positive behaviour indicators observed increased during that same period. However, not all differences were statically significant. Paired-sample sign tests found that the median significantly decreased in the number of adjudications accrued by residents at the PR six months after their progression move, $p = .022$. A statistically significant median decrease was also found for the number of negative behaviours, $p = .003$; and a statistically significant median increase in the number of positive behaviours, $p < .001$, both after the six months period of admission into the PR.

Tables 3 and 4 below show the frequencies and the sample's median scores of the scaled variables, respectively.

Table 3: Paired-sample sign test frequencies

Scaled variables		N
Adjudications after-adjudications before	Negative differences	23
	Positive differences	9
	Ties	27
	Total	59
Neg. behaviour after-neg. behaviour before	Negative differences	31
	Positive differences	11
	Ties	17
	Total	59
Pos. behaviour after-pos. behaviour before	Negative differences	11
	Positive differences	42
	Ties	6
	Total	59
Self-harm after-self-harm before	Negative differences	7
	Positive differences	4
	Ties	48
	Total	59
Violence after-violence before	Negative differences	6
	Positive differences	3
	Ties	50
	Total	59

Table 4: Scaled variable median scores

	Percentiles								
	Before			After			Difference		
	25th	50th (M)	75th	25th	50th (M)	75th	25th	50th (M)	75th
Adjudications	.00	.00	2.00	.00	.00	1.00	.00	.00	1.00*
Neg. behaviour	.00	2.00	4.00	.00	.00	2.00	.00	2.00**	2.00
Pos. behaviour	1.00	2.00	3.00	2.00	8.00	12.00	1.00	6.00***	8.00
Self-harm	.00.	.00.	.00	.00	.00	.00	.00	.00	.00
Violence	.00	.00	.00	.00	.00	.00	.00	.00	.00

* $p < .05$. ** $p < .01$. *** $p < .001$

A positive effect on prison behaviour can be observed in that the incidence and prevalence of adjudications and negative behaviours significantly decreased six months after the residents' admission

onto the PR, and with the incidence and prevalence of positive behaviours significantly increasing during that same period.

Variation in observed behaviour by independent variables

Kruskal-Wallis tests examined the differences in the prisoners’ mean rank scores on the scale variables of adjudications, negative behaviour, and positive behaviour, in relation to their individual characteristics of age and sentence, six months into their progressive

move onto the PR. Table 5 shows the sample’s mean rank scores by age and sentence. A statistically significant relationship was observed for negative behaviour and age ($H(2) = 8.35, p < .05$). Post hoc comparisons (Dunn-Bonferroni) revealed statistically similar scores for the under 35 (M rank 33.44) and 35-50 (M rank 33.24) groups, but a significantly lower score for the over 50 group (M rank 19.32, $p = .02$).

Table 5: Mean rank scores for adjudications, negative, and positive behaviour by age and sentence.

IVs	DVs	N	M rank
Age			
Adjudications	Under 35	18	31.36
	35-50	27	30.31
	Over 50	14	27.64
	Total	59	
Neg. Behaviour	Under 35	18	33.44
	35-50	27	33.24
	Over 50	14	19.32*
	Total	59	
Pos. Behaviour	Under 35	18	30.72
	35-50	27	29.87
	Over 50	14	29.32
	Total	59	
Sentence			
Adjudications	Life	21	28.69
	Imprisonment for public protection	33	31.45
	Extended determinate sentence	5	25.90
	Total	59	
Neg. Behaviour	Life	21	26.50
	Imprisonment for public protection	33	32.35
	Extended determinate sentence	5	29.20
	Total	59	
Pos. Behaviour	Life	21	31.57
	Imprisonment for public protection	33	30.92
	Extended determinate sentence	5	17.30
	Total	59	
* $p < .05$			

No statistically significant differences in values were found in relation to sentence type for adjudications ($p = .614$), negative behaviour ($p = .414$), or positive behaviour ($p = .220$).

The Spearman’s rank-order correlation revealed a significant negative correlation between negative behaviour and age ($rs(59) = -.30, p = .019$). This would suggest that older residents are less likely to display negative behaviours. A coefficient of .30 signals a moderate correlation, which means that 9 per cent of the variance ($.03 \times .03$) in age explains variation in negative behaviour.

Discussion

The findings from the present study suggest that the type and prevalence of some observed behaviours vary after individuals are transferred from ordinary prison location to a PR. However, the age of the individual partly explains some of this difference.

Two major findings emerged from the study. Firstly, significant differences were found for observed behaviour indicators of adjudications, and negative and positive behaviour. The results suggest that the PR had a positive effect on observed behaviour indicators in

that the incidence and prevalence of adjudications and negative behaviours significantly decreased six months after the residents' admission onto the PR, with the incidence and prevalence of positive behaviours significantly increasing during that same period. This seems to be congruent with previous studies which found that enabling environments promote the development of positive prison behaviour.³⁵

Secondly, a statistically significant difference was found between the demographic variable of age and the incidence and prevalence of observed negative behaviour indicators. The results indicate that the older residents are, the less likely they are to display negative behaviours. Further analysis showed that, although weak, a significant negative correlation exists between observed negative behaviour and age. These findings appear to be consistent with previous research on the age-crime curve of violence and other negative or antisocial behaviours.³⁶ However, although its effects are considered universal, the shape of the curve can vary amongst different populations,³⁷ and its effects cannot only be attributed to the ageing process alone, but to other variables that emerge from the situational context individuals find themselves in.³⁸ Type of sentence was found not to have a statistically significant influence on the results of the present study; however, recent studies show that sentence can explain variation in observed prison behaviour in recent studies through the resident's accumulated experience of the custodial environment.³⁹

Implications for Policy

The key findings of the research provide some insight into the effectiveness of PRs as measured by the

incidence and prevalence of observed behaviour indicators six months after the individuals' progressive move into this specialist environment. It provides a baseline for the forthcoming HMPPS review of success measures within PRs at a national level. It also draws attention to the need for developing a standardised process of recording observed behaviour indicators on NOMIS. It could be that the environment that the PR offers is not solely responsible for a change in observed behaviour, per se, but that it may be attributed to the way its staff responds to and record observed prison behaviour on NOMIS, or to variables not accounted for in this study.

Limitations of the Study

The small sample and single site of study means the findings may not be generalisable to other PRs. The findings should be considered preliminary at this stage. The use of secondary research data did not allow for some important behaviours to be studied (such as substance misuse), or for additional variables that may impact on custodial behaviour to be included in the analysis (such as the length of time spent in custody prior to PR admission). Whilst it will not be possible to account for all variables that may count for observed behavioural change, these could have potentially had an impact on the study's results. Research suggests that the longer individuals are

kept in custody, and their sense of hopelessness increases, the prevalence of observed behaviour indicators such as self-harm, substance misuse, and aggression, also increases, particularly within that group of men serving IPP sentences.⁴⁰ Data from the Prison Reform Trust and HM Inspectorate of Prisons had previously shown that the impact of serving an IPP

The results indicate that the older residents are, the less likely they are to display negative behaviours. Further analysis showed that, although weak, a significant negative correlation exists between observed negative behaviour and age.

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- 35. Liebling, A. (2012) *What makes prisons survivable. Towards a theory of human flourishing in prison*. SCCJR 7th Annual Lecture, University of Edinburgh, Edinburgh.
 - 36. Kolivoski, K., & Shook, J. (2016) Incarcerating juveniles in adult prisons: Examining the relationship between age and prison behavior in transferred juveniles. *Criminal Justice and Behavior*, 43(9), 1242-1259.
 - 37. Loeber, R. (2012) Does the study of the age-crime curve have a future? *The future of criminology*, 11-19.
 - 38. Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of youth and adolescence*, 42(6), 921-938.
 - 39. Harris, M., Edgar, K., & Webster, R. (2020) 'I'm always walking on eggshells, and there's no chance of me ever being free': The mental health implications of Imprisonment for Public Protection in the community and post-recall. *Criminal Behaviour and Mental Health*, 30(6), 331-340.
 - 40. Harris, M., Edgar, K., & Webster, R. (2020) I'm always walking on eggshells, and there's no chance of me ever being free: The mental health implications of Imprisonment for Public Protection in the community and post recall. *Criminal Behaviour and Mental Health*.

sentence on prisoners' wellbeing increased the prevalence of such indicators.⁴¹ Notwithstanding this, the need for further research to empirically validate such findings and other factors that influence custodial conduct not accounted for in this study remain outstanding.

Finally, the quantitative nature of the study does not enable insight into why or how significant differences in some of the observed behaviours were found.

Conclusions and Future Study

The results of the present study indicate a positive change in observed prisoner behaviour to be associated with being located in PRs. There was a decrease in the number of negative behaviour indicators observed in the six months following the prisoners' progressive move to the PR. The number of positive behaviour indicators observed increased during that same period. This is consistent with contemporary research on the effects on enabling environments on prison behaviour.⁴² Further analysis revealed that the variation previously

observed on behaviour indicators may partially be explained by the individuals' demographic characteristic of age. Although a weak association was found, this is consistent with previous literature on the effects of the age-crime curve on violence and other forms of antisocial behaviour.

Whilst these results cannot be attributed for certain, to the influence that the PR has had on its residents, the limitations of the study can partly be overcome by conducting further research. Future research may include the use of qualitative or mixed methods research designs to further explore what aspects of the PRs particularly work for their residents, and what other factors may count towards behaviour change. When considering the complex relationship between desistance pre-and post-release, longitudinal studies could help examine the attribution of actual behavioural change.⁴³ Are PR staff recording behaviours differently from their counterparts in non-specialist units; how is the regime of those feeding prisons into PRs? Have PR residents learned to mask risky behaviours during their journey through the criminal justice system?

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41. Prison Reform Trust (2016). *Bromley Briefings Prison Fact File: Autumn 2016* Prison Reform Trust. London. Retrieved from [http://prisonerreformtrust.org.uk/wp\[1\]content/uploads/old_files/Documents/Bromley%20Briefings/old%20editions/Autumn%202016%20Factfile.pdf](http://prisonerreformtrust.org.uk/wp[1]content/uploads/old_files/Documents/Bromley%20Briefings/old%20editions/Autumn%202016%20Factfile.pdf)
 42. Davies, J., Pitt, C., & O'Meara, A. (2019) Learning Lessons from Implementing Enabling Environments Within Prison and Probation: Separating Standards from Process. *International Journal of Offender Therapy and Comparative Criminology*, 63(2), 218-231.
 43. Cochran, J., & Mears, D. (2017) The path of least desistance: Inmate compliance and recidivism. *Justice Quarterly*, 34(3), 431-458.

Closing the evidence to practice gap: how can we embed procedural justice principles into complaint responses to prisoners?

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This is an exploratory piece of research to test whether a new process and a template had the potential to change staff practices when replying to prisoner complaints. Based on the body of evidence on the benefits of procedural justice (PJ), HMPPS updated their policy in 2019¹ to include the use of these principles in complaint responses. However, we know from a behavioural perspective that changing everyday habitual practices can be difficult.

As part of this research, we developed a tool that enabled us to quantify the amount of procedurally just language in complaint responses and infer simplicity, comprehension and congruence.

We conducted a retrospective one group pre- and post-audit on complaint responses at one Male Adult Category C Prison — HMP Buckley Hall and analysed the text using our newly developed tool, text mining packages and readability measures.

We demonstrated that the approach shows promise in changing behaviour over a sustained period (1 year and 4 months) and is worth testing more rigorously. The proof-of-concept approach has been beneficial: we have evidenced that there is potential to increase the use of PJ within complaint responses, we have identified some unintended consequences and we have tested a tool to quantify the amount of procedurally just language within complaint responses.

The Evidence to Practice Gap

In healthcare, it takes on average 17 years to get Evidence Based Practice (EBP) incorporated into routine practice, and only about half of EBPs ever reach widespread clinical use.² The Evidence-Practice gap is defined as 'The failure of clinicians to adopt proven practices that enhance outcomes for patients.'³

There is a large and robust international evidence base on the importance of PJ to prisoners.⁴ When people feel treated in procedurally just ways it contributes to a host of better outcomes in a relatively simple, swift and economic way. However, there is an absence of research on how to change practices in prison to improve perceptions of PJ. The habitual nature of daily routines means that knowledge of the importance of PJ is likely to be insufficient.

We have looked to other areas, outside of the Criminal Justice System, to learn how we might increase the pace of embedding EBP in prison settings. There has been a lot of work in healthcare to understand the behavioural barriers and facilitators of uptake of EBPs into routine practice. A recent systematic review suggests that interventions should focusses on physical and social opportunities and psychological capability (see Table 1).⁵

1. HMPPS (2019). Prisoner Complaints Policy Framework. <https://www.gov.uk/government/publications/prisoner-complaints-policy-framework> [accessed June 2022].
2. Morris, Z., Wooding, S., & Grant, J. (2011) The answer is 17 years, what is the question: understanding time lags in translational research. *Journal of the Royal Society of Medicine*, 104, 510-20.
3. Free Medical Dictionary by Farlax. Evidence-practice gap I definition of evidence-practice gap by Medical dictionary (thefreedictionary.com) [accessed 29 April 2022].
4. Fitzalan Howard, F., & Wakeling, H. (2020) People in Prisons' Perceptions of Procedural Justice in England and Wales. *Criminal Justice and Behavior*, 47(12), 1654-1676.
5. McArthur, C., Bai, Y., Hewston, P., et al. (2021) Barriers and facilitators to implementing evidence-based guidelines in long-term care: a qualitative evidence synthesis. *Implementation Science*, 16, 70.

Table 1: Barriers and facilitators to the implementation of EBP

Behavioural construct	Barriers	Facilitators
Psychological capability: <i>knowledge or psychological skills, strength or stamina to engage in the necessary mental processes</i>	Knowledge gaps	Adequate knowledge and education
Physical opportunity: <i>opportunity afforded by the environment involving time, resources, locations, cues, physical affordance</i>	Time constraints and inadequate staffing Cost and lack of resources Resident complexity Compromised communication and information flow Staff turnover Competing priorities Guideline complexity and associated workload Impractical guidelines	Well-designed strategies, protocols and resources Adequate services, resources and time Innovative environmental modifications
Social opportunity: <i>opportunity afforded by the interpersonal influences, social cues and cultural norms that influence the way that we think about things</i>	Lack of teamwork Lack of organisational support Inconsistent practices Reactive approach	Leadership and champions Support and coordination among staff Involving residents and families Good communication and information flow

There is limited evidence on how to adopt PJ practice in a Justice context. We found one example in a related context: the Police Service in Queensland Australia conducted a randomised control trial to examine the impact of a procedurally just routine random breath test process compared to business as usual practices.⁶ The purpose was to understand whether a defined practice that was built on PJ principles could shape what people think about the police during the encounter and their view on the legitimacy of the police more generally.

Police in the experimental arm were given a simple ‘cue card’ with reminders to follow a PJ script when completing the random breath test. Citizens in both arms (i.e. the experimental and control groups) were asked to complete a questionnaire using validated measures from legitimacy literature. Citizens who perceived the encounter to be more PJ had more positive views of police, which were related to increases in general perceptions of PJ, legitimacy, satisfaction and cooperation. This research shows that with the use of specific tools it is possible to increase perceptions of PJ.

Prisoner complaints in HMPPS

In the 12 months to 31 March 2021 there were approximately 178,100 complaints from prisoners across the prison estate in England and Wales.⁷ The Prison and Probation Ombudsman (PPO) investigated 1682 complaints. They upheld 30 per cent of the cases. In their annual report, the PPO noted that ‘there are still too many examples of careless or policy-non-compliant complaint responses.’

Although not well-tested empirically, internal reviews, external reports (such as from the PPO) and anecdotal reports from within HMPPS suggest that the complaints system is one process in prisons which is perceived to be procedurally unjust. In 2019, HMPPS updated the complaints policy, and based on international and national evidence, some of the additions now required PJ principles to be reflected in all responses to prisoners. Specifically, regarding PJ, the policy was updated to contain explanations as to why PJ is important in prison settings, with examples of what this would look like in practice. The policy also

6. Mazerolle, L., Antrobus, E., & Bennett, S. (2013) Shaping citizen perceptions of police legitimacy: a randomised field trial of procedural justice. *Criminology*, 51(1), 33.
7. Prisons and Probation Ombudsman (2021). Annual Report 2020/21.

contained an introductory section on the new complaints response form to prompt people to consider PJ as they were responding.

Procedural Justice

PJ is the extent that people perceive that they are treated in a just and fair manner by people in authority. The theory argues that if people experience process and procedures to be fair and just then they are more likely to view the law and authority figures to be legitimate.⁸ In turn, this leads to increased compliance and commitment to obey the law.⁹ PJ works even if the outcome of the decision or process is not in the person's favour, as although outcomes are obviously important, the literature suggests that it is the perception of the process that matters more.

PJ perceptions comprise four principles:

- ❑ **Voice** — people need an opportunity to give their side of the story and to feel that they have been listened to and their concerns heard.
- ❑ **Neutrality** — decisions are made from a starting point of neutrality and that rules are interpreted and applied consistently and transparently.
- ❑ **Respect** — people feel that they are treated courteously and with respect by authority and that their rights and dignity are respected.
- ❑ **Trustworthy Motives** — people need to trust those in authority and believe that they act in everybody's best interests.

Evidence on Procedural Justice in a Prison Context

Previous studies, both in England and Wales and internationally, have linked PJ perceptions to a series of important outcomes for prisoners, including mental health and wellbeing, misconduct and violence, and

reoffending after release. Some of these studies have used particularly robust research designs (enabling causal conclusions to be drawn), and collectively the similarity of findings across studies implies that we can be confident in our understanding.

In summary, prisoner perceptions of procedurally unjust treatment have been associated with depression, anxiety and distress, and self-reported mental health symptoms, self-harm and attempted suicide, and vice versa.^{10 11 12 13 14} Similarly, such perceptions are associated with significantly higher rates of self-reported and officially recorded rule-breaking, including assaults.^{15 16 17} And finally, the one study available investigating recidivism outcomes, reported that prisoners who feel treated fairly and respectfully in prison are significantly less likely to be reconvicted within 18 months of release.¹⁹

Incorporating PJ in Complaint Responses

Based on recommendations by the HMPPS Evidence-Based Practice Team and requirements in the updated Complaints policy framework, the Complaints Clerk and Deputy Governor at HMP Buckley Hall designed a new process and complaint template ('the prototype') to improve their local practices. It had four main components (see below and Figure 1).

1. Reflection workshop for senior staff and those responding to complaints run by the Deputy Governor on PJ including good/bad examples. In addition, the complaint responses being written in a PJ way, the expectation was set that each prisoner is to be spoken to before a reply is issued.
2. Complaints Clerk sends reminder checklist and template with the complaint to the responder to make it easy to follow the new process. The template provides a letter response format with specific entries which should be tailored for each response, intended

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8. Lind, E., & Tyler, T. (1988) *The social psychology of procedural justice*. Plenum Press.
9. Tyler, T (1990) *Why people obey the law*. Yale University Press.
10. Gover, A., MacKenzie, D., & Armstrong, G. (2000) Importation and deprivation explanations of juveniles' adjustment to correctional facilities. *International Journal of Offender Therapy and Comparative Criminology*, 44, 450-466
11. Liebling, A., Durie, L., Stiles, A., & Tait, S. (2005). Revisiting prison suicide: the role of fairness and distress. In A. Liebling & S. Maruna (Eds.) *The effects of imprisonment*. Cullompton, Devon: Willan Publishing
12. Slotboom, A., Kruttschnitt, C., Bijleveld, C., & Menting, B. (2011). Psychological wellbeing of Dutch incarcerated women: importation or deprivation? *Punishment and Society*, 13, 176-197
13. Beijersbergen, K., Dirkzwager, A., Eichelsheim, V., et al (2014). Procedural justice and prisoners' mental health problems: a longitudinal study. *Criminal Behaviour and Mental Health*, 24, 100-112
14. See footnote 4: Fitzalan Howard, F., & Wakeling, H. (2020)
15. Butler, M. & Maruna, S. (2009). The impact of disrespect on prisoners' aggression: outcomes of experimentally inducing violence-supportive cognitions. *Psychology, Crime & Law*, 15, 256-250
16. See footnote 4: Fitzalan Howard, F., & Wakeling, H. (2020).
17. Beijersbergen, K. A., Dirkzwager, A. J. E., Eichelsheim, V. I., & Van der Lann, P. H. (2015). Procedural Justice, anger, and prisoners' misconduct. *Criminal Justice and behaviour*, 42, 196-218
18. Bierie, D. M. (2013). Procedural justice and prison violence: examining complaints among federal inmates 2000-2007. *Psychology, Public Policy and Law*, 19, 15-29
19. Beijersbergen KA, Birkzwager AJE & Nieuwbeerta P (2016) Reoffending after release: does procedural justice during imprisonment matter? *Criminal behaviour and Mental Health*, 43, 63-82

to demonstrate the four principles of PJ. The template is a mix of suggested content (some of which is meant to be adapted depending on the context) and cues for specific types of content to be included, such as '[include here evidence considered]'.

3. Complaints Clerk quality assures proposed replies and escalates to Deputy Governor if deemed not to be of high enough quality.
4. If needed, Deputy Governor has coaching conversation with staff to improve the PJ content of their complaint response before it is issued.

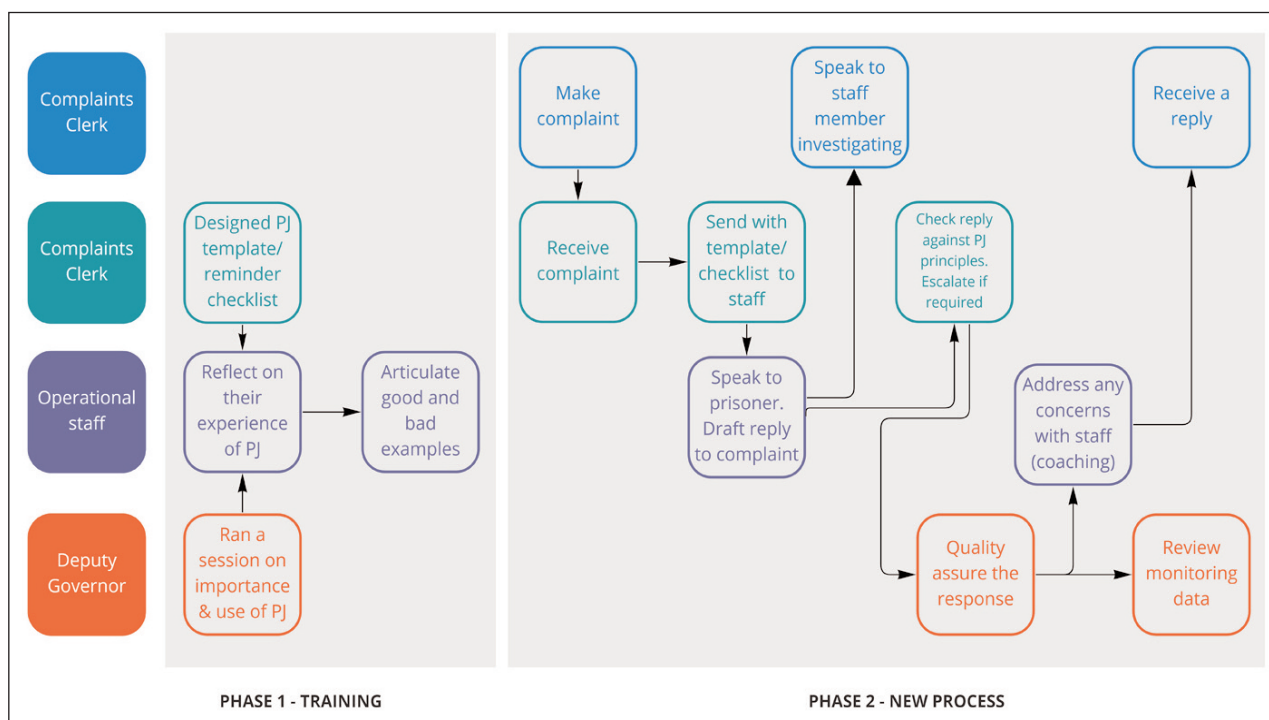


Figure 1: The prototype — Process and Template designed to incorporate PJ into complaints process.

How change might happen

Even with the best intentions, individuals can struggle to change. Previous research into incorporating PJ principles into disciplinary adjudications²⁰ highlight some of the problems²¹:

1. People lacking self-awareness:

'What struck me on the training was that everybody thinks they're really good already. We all think we're already doing it, don't we, and we can't be'

2. Making more abstract concepts applicable to real life:

'...where you'd drawn out examples of good and bad [practice], I found that the most

powerful bit really because you can understand it yourself.... and you can really identify with that.'

3. Remembering to do it:

'[we need] a visual reminder...a piece of paper that gets stuck to a desk'

In the field of psychology, it is believed that many of our daily actions are controlled by habits and impulses driven by short-term rewards.²² We perform routine tasks on autopilot and as the trigger is sub-conscious, it can be hard to execute a different action, even when intended.

However, in the field of sociology, habit is viewed slightly differently. It is defined as a series of social practices rather than discrete behaviours.²³ In social

20. Disciplinary adjudications is a process in English and Welsh prisons for responding to more serious alleged misconduct. For more information, see PSI 05/2018 <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2018/psi-05-2018-prisoner-discipline-procedures-adjudications.pdf>

21. Fitzalan Howard, F. & Wakeling, H. (2021). The experience of delivering 'Rehabilitative Adjudications' in English Prisons. Psychology, Crime & Law <https://doi.org/10.1080/1068316X.2020.1850726>

22. Gardner, B. (2015). A review and analysis of the use of habit in understanding, predicting and influencing health-related behaviour. *Health Psychol Rev*, 9(3), 277-295.

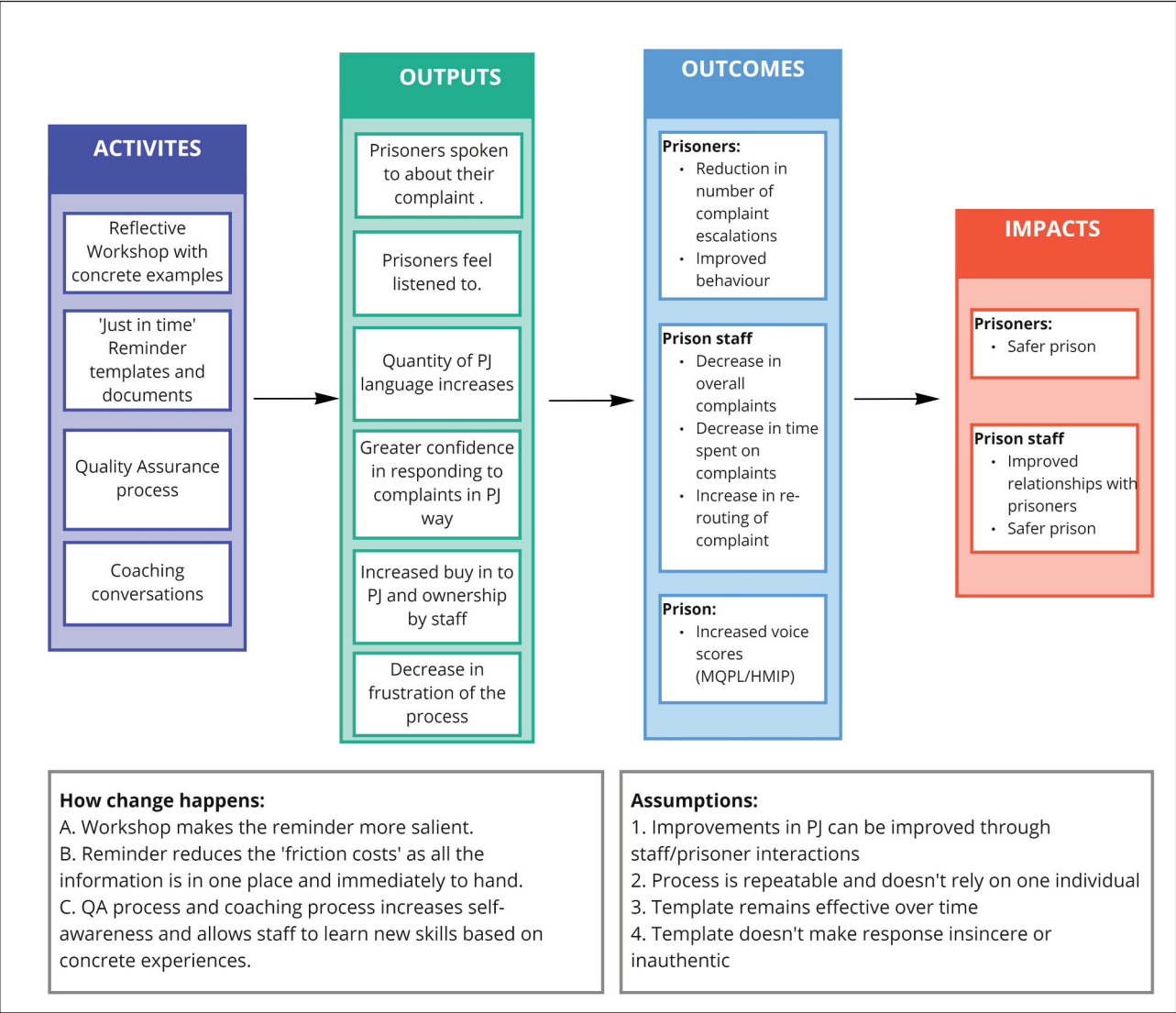
23. Berger, P. L., & Luckmann, T. (1966). *The social Construction of Reality: A Treatise in the Sociology of Knowledge*. Garden City, NY: Anchor Books

practice theory, the habit is the whole practice which means that to change routine it is essential to tackle the elements that sustain them. This approach tends to less on individual motivations and beliefs and more on making structural changes that make it easier for the individual to adopt the 'new' routine.

The barriers and facilitators identified in Table 1 from healthcare research appear to be in line with

sociology's view of changing habits: that it is the interplay between structures and processes to provide the physical and social opportunity which are important rather than individual motivations and beliefs. We used this definition as the overarching theory for how change might happen through a focus on process to facilitate required behaviours to occur.

Figure 2: Our Theory of Change



As a behavioural strategy, sending the template and checklist to the staff member with the complaint is a 'just in time' reminder. Reminders are a well-established 'nudge' strategy in healthcare to help people overcome procrastination and change their behaviour.²⁴ The hypothesis was that the workshop on PJ would increase staff buy-in to the new process and this would make the reminder more salient. We also hypothesised that it would reduce 'friction costs' by making it easier for the individual to complete the

new task; they would not have to remember where the template is or what they were supposed to do — all the information was there in one place just when they needed it. It was envisaged then that the workshop and template would help to overcome the barriers of time constraints, communication and information flow, guideline complexity and associated workload, impractical guideline, lack of organisational support, inconsistent practices, and a reactive approach.

24. Kwan, Y. H., Cheng, T. Y., & Yoon, S. et al. (2020). A systematic review of nudge theories and strategies used to influence adult health behaviour and outcome in diabetes management. *Diabetes and Metabolism*, 46(6), 450-460.

The Quality Assurance (QA) process and coaching practice is based on the premise of Kolb’s cycle and that people learn through experience.²⁵ We hypothesised that the QA and coaching would enable the individual staff members to reflect on their concrete experience and form and test new concepts based upon this reflection. We anticipated that this would facilitate EBP into action through improving personal knowledge and education, use of leadership and champions, and support and coordination among staff.

Aim of Evaluation

The HMPPS Evidence-Based Practice Team and the MoJ Evaluation and Prototyping Hub joined up with HMP Buckley Hall to learn from the implementation of their prototype.

Our overarching aim was to understand whether the prototype showed any promise in changing practice in responses to complaints. We wanted to test some of the assumptions that underpin our model as well as seeing if PJ language in complaint responses increased.

Primary Question

- 1. Did the template change the amount of PJ language in written responses?

Secondary Questions

- 2. How frequently were four PJ Principles incorporated into written responses?
- 3. How authentic/genuine did the responses feel?
- 4. Did the impact of the template degrade over time?

Method

This was a retrospective *audit* that measured the content of written responses before and after the new

prototype was introduced. This meant that we could only work with pre-existing data that was available, and that there was no comparison group. Whilst there are limitations with this method, the purpose of this work was to demonstrate proof of concept and to decide whether it is worth taking to a more rigorous method of evaluation. We also wanted to develop and test our data collection tool (see below). This quick retrospective audit allowed us to test this tool with real data and make improvements, so that we could decide whether the tool was reliable enough to be used for further research. The primary outcome was the quantity of PJ content. To measure this, we developed a tool and used summative content analysis²⁶ to rate the amount of PJ content in complaint responses.

PJ Content

The first step was to explore usage of PJ principles. We took each principle and developed criteria for what we would expect to see in a complaint response if that principle was being demonstrated (see Table 2). We created two tiers for each principle as we felt that some PJ criteria were fundamental to any response (tier 1) whilst some criteria were additional (tier 2). Given that it would be impossible (and not particularly useful) to expect each complaint response to meet every criteria, we scored 1 point if the response demonstrated any of the criteria in each tier. This meant that a response could score a maximum of 2 points, one for a tier 1 demonstration, and one for a tier 2 demonstration.

Table Two: Defining the Procedural Justice Criteria in our Tool

	Voice	Neutrality	Respect	Trustworthy Motives
Tier 1	Actively spoke to the individual	Use facts and evidence to make decision Use causal language to demonstrate outcome	Used please and thank you Apologised if late Felt personal vs a 'stock' reply	Showed ownership Used perspective taking Demonstrated empathy
Tier 2	Demonstrate active listening	Balance of probability in decision making Clear about the process	Used non stigmatising language	Demonstrated an understanding of the impact of the outcome Signposted to further information
Overall	Infer if it was: 1. Simple language with no jargon 2. Easy to understand (comprehension) 3. Congruent throughout			

25. Sims, R. R. (1983). Kolb's Experiential learning Theory: A framework for Assessing Person-Job Interaction. *Academy of Management Review*, 8, 501-508.

26. Hsieh, H. F., & Shannon, S. E. (2005). Three Approaches to Qualitative Content Analysis. *Qualitative Health Research*, 15(9), 1277-1288.

The second step was to infer meaning and interpretation of content. We wanted to infer whether it was simple and comprehensible but also whether the content was congruent. This last inference was included due to our concerns before we started, that a template can make responses come across as disingenuous and inauthentic. For example, when we know someone who is meant to be helping us is reading verbatim from a script it can backfire and create dissatisfaction. For this part of the tool, we devised an overall score with a point for simplicity, a point for comprehension, and the ability to take away a point if the content was 'jarring' and incongruent. For example, a point might be taken away if the response said 'I hope this has resolved your issue' when it was clear from the content of the original complaint that this wasn't the case.

Altogether, the overall score for each response could range from -1 to 10 and had both a quantitative and qualitative element in the overall score.

Sentiment

Further, we used sentiment analysis of the text to understand the content of responses (using R²⁷). This enables words to be 'tagged' as to whether they are negative or positive, score how negative or positive the words are (i.e. their strength of positivity or negativity), and tag the opinion or emotion associated with the word.

We used the change in the amount of negative to positive words as a proxy for neutrality and were able to analyse the change in trustworthy words, litigious words and uncertainty words. These were proxies for respect and trustworthy motives. This analysis was descriptive so that we could understand and learn what changes in content the new prototype delivered.

Readability

Finally, as the most recent data published by the Ministry of Justice shows that 57 per cent of adult prisoners taking initial assessments had literacy levels below those expected of an 11-year-old,²⁸ we used

readability measures²⁹ to understand what changes happened in terms of sentence length, percentage of difficult words and the reading age of the text. Readability refers to the ease in which a passage of written text can be understood. It is often used in assessing the suitability of a text for an audience. The Flesch-Kincaid Grade Level heuristic was used to measure reading age and it indicates that the text can be read by the average student in the specified grade level (please note that the grade level is US School Grade).³⁰

Procedure

PJ Content

We randomly sampled every 15th complaint response in the period of 14 January 2019 — 10 May 2019 ('the pre period') and every 15th complaint response after the new prototype had been introduced between 15 May 2019 — 30 March 2020 ('the post period'). Each complaint response was scored by two raters with an understanding of PJ. Each rater was 'blind' to the others' score until all ratings had been completed. Raters were randomly allocated their letters using a random number generation in Excel.

If the scores from two raters were within 1 point of each other, the mean was taken as the final PJ score for that letter. Seventy five percent of the scores

fell within this variance. If the scores were greater than 1, the letters were discussed at a moderator meeting and after debate and discussion, agreed by all four raters. These discussions were captured and used to develop the tool and the protocol to increase consistency in its use in any future evaluations. The developments consisted of giving concrete examples and better descriptions of what constituted a criterion being met.

As discussed above one of the outcomes of this proof-of-concept stage has been to develop the tool for future evaluations or to enable prisons to assess their own complaint response content. For tool reliability we needed to meet three criteria:

One of the outcomes of this proof-of-concept stage has been to develop the tool for future evaluations or to enable prisons to assess their own complaint response content.

27. A free to use source code which allows you interrogate data.

28. Ministry of Justice (2021). Prison Education Statistics April 2019 to March 2020. Official Statistics Bulletin.

29. Readability Analyzer (datayze.com)

30. Flesch Reading Ease and the Flesch Kincaid Grade Level – Readable [accessed 13 May 2022]

- ❑ Stability — the tendency for coders to consistently code the same data in the same way
- ❑ Reproducibility — to classify categories in the same way
- ❑ Accuracy — the extent to which the classification corresponds to a norm statistically

We demonstrated reasonable reliability, but we would want to better this in any future work using our tool through updates to the criteria based on what we learnt (see later).

Sentiment Analysis

An analyst with experience of text mining, imported all text in the responses pre and post into R. They tagged the words using different dictionaries to enable multiple analyses.³¹ Pre and post periods were compared.

Readability Analysis

Text was imported into Readability Analyzer (datayze.com) and the different metrics captured. Pre and post periods were compared for sentence length, percentage of difficult words and school grade (reading age).

Findings

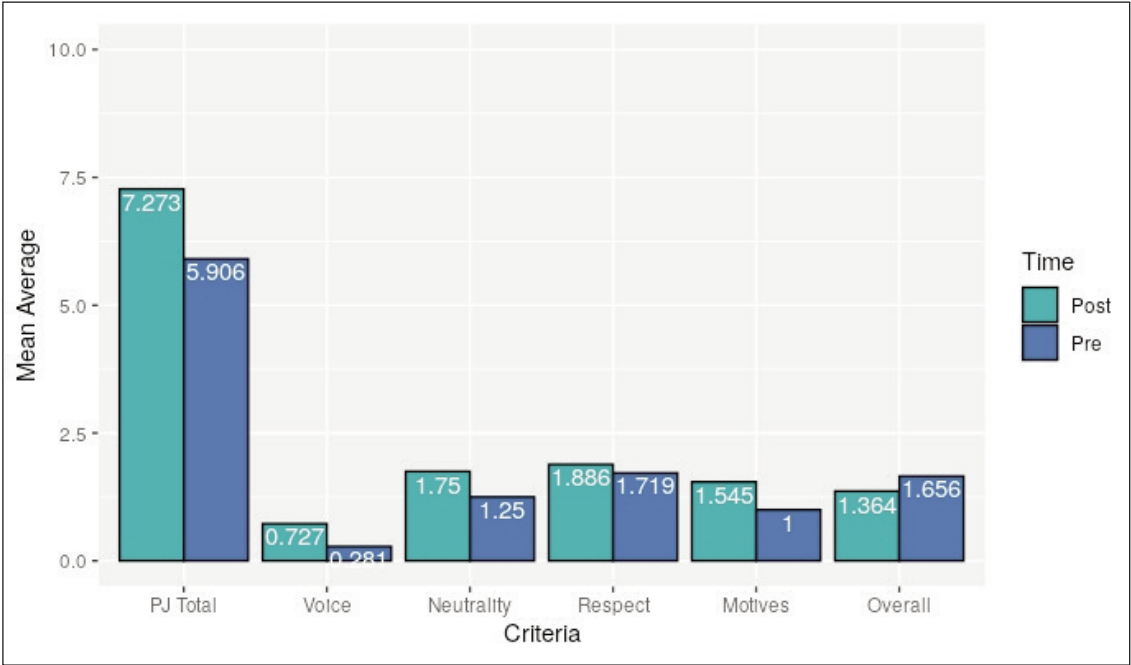
Procedural Justice Content

Our overall aim was to understand if this prototype showed promise — we had a very small sample size so it wasn’t powered to detect statistically significant changes. The following results are descriptive and enable us to understand the potential and direction of any change and establish baseline levels.

We found that overall PJ content increased from an average score of 5.91 (out of 10) to 7.27 (see Figure 3). This is an increase of 23 percent. In additional, all the individual PJ principle scores increased although there was variation in baseline levels. For example, despite intention to speak to every prisoner prior to replying to the complaint and reflecting this back in the written complaint response, we found the least evidence of this principle being applied in practice.

The only score to decline was the overall score which comprised simplicity, comprehension and congruence. This is because we inferred a consistent incongruence between the content of the reply and signposting for further support. This was rarely tailored to the circumstances and felt consistently inauthentic to the four people reviewing the content. For example, a prisoner who had complained about not receiving a pair of trainers they purchased was signposted to get further support from a listener, a member of unit staff, Healthcare and Drug and Alcohol recovery services, the Independent Monitoring Board or a Governor.

Figure 3: Difference in PJ content in the pre and post period.



Note: PJ total has a maximum score of 10 and is made up of adding together voice, neutrality, respect, motives and overall, each of which have a maximum score of 2.

31. The dictionaries used were afinn, bing, Loughran and Nrc Function reference • textdata (emilhviltfeldt.github.io) [accessed 13 May 2022]

Sentiment Analysis

We used overall sentiment change between positive and negative words as a proxy marker for neutrality (Figure 4.1). This involves taking away the number of negative words from positive words to create a polarity score. In the pre period the polarity was -16 and in the post period was -2. This means that the post period language was more balanced. In other analysis, we looked at the strength (valence) of these positive and negative words. There was a huge increase in the number of positive words with a small to medium positive valence. These are words like: fair, gain, need, hopeful, better, confidence, determined, encourage, progress and appreciates.

In Figure 4.2, we examined the change in emotional content of words in pre and post responses. The largest increase was in the proportion of ‘trust’ words (such as responsible, team, system, authority, understanding) and the largest decrease was in ‘sadness’ words (such as late, unfortunate, error, unacceptable, unable).

Finally, we used a different type of dictionary to demonstrate the change in opinionated words. The findings mirrored the previous changes discussed in positive and negative words but also showed a decrease in the proportion of ‘uncertainty’ words (such as doubt, confusion, risk, presuming) and litigious words (such as adjudication, claim, appeals and regulations).

Figure 4.1: Changes in polarity of words in the pre and post period

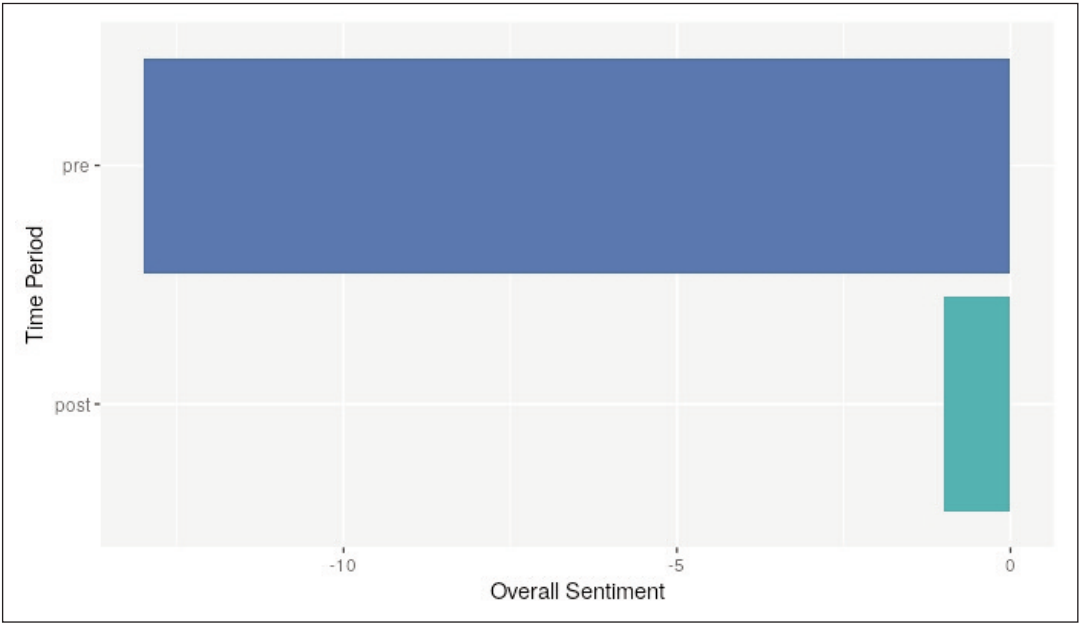
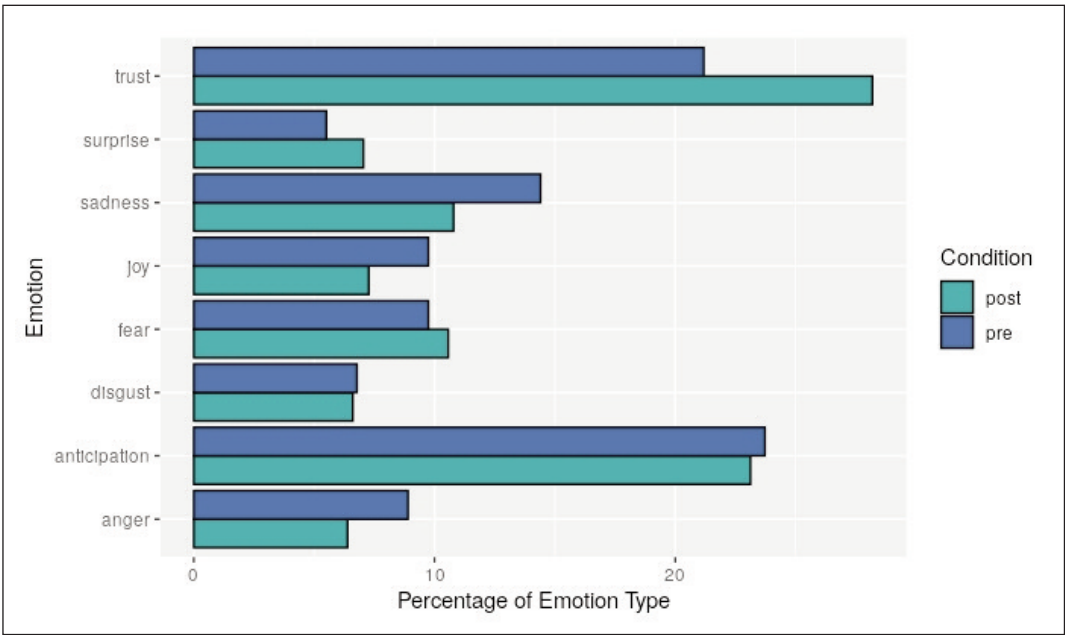


Figure 4.2: Changes in the emotional content of words in the pre and post period



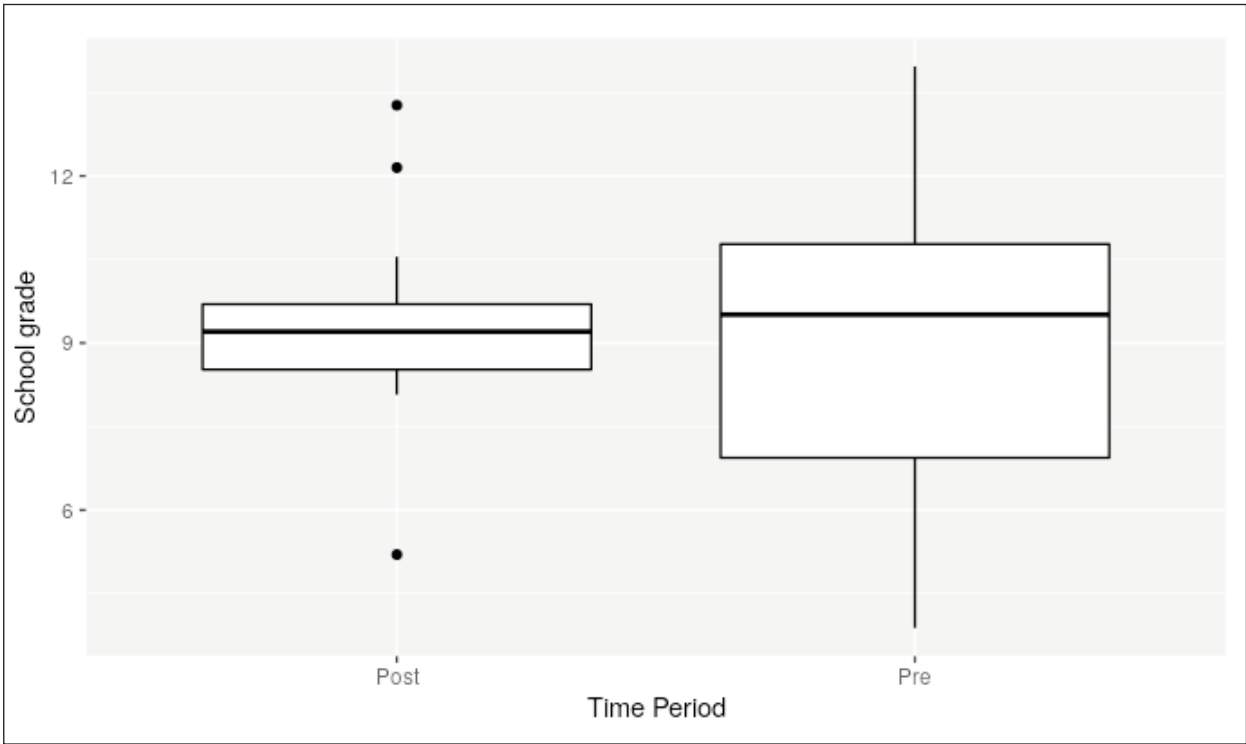
Readability

Whilst the overall average (denoted by the thick line in the middle of each box in Figure 5) in school grade didn't change very much at all between pre and post phases, there was a decrease in the variance of distribution of school grade which means that responses in the post period were more consistent (denoted by the size of the boxes and length of the

lines from the boxes being smaller). The average school grade was 9 (US system) which equates to 14-15 year old reading age.

We also looked at sentence length and percentage of difficult words. It should be noted that there was a slight increase in the average number of difficult words used, which is a concern and reading age is still too high. This is something that we discuss later.

Figure 5: Change in reading age



Discussion

This study expands on the work done in HMPPS to develop PJ practice to improve outcomes. Additionally, and perhaps more importantly, the work informs broader operational understanding of how we might develop and test different techniques to change practice and close the evidence to practice gap.

1. Did the template change the amount of PJ language in written responses?

Our primary question was to understand whether the new prototype could change the quantity of PJ language in complaint responses. We have been able to confirm that changes in content appear to be changing in the desired direction with a positive increase of over 20 per cent in PJ content. We were aware that inter-rater variability was a bit lower than we would have liked. We have updated the criteria for some principles to make it more reflective of what we learned through this exploratory study.

For example, in the neutrality principle we had four criteria:

- ❑ Tier 1: Use facts and evidence to decide
- ❑ Tier 1: Use causal language to demonstrate the outcome
- ❑ Tier 2: Balance of probability in decision making
- ❑ Tier 2: Clear about the process

We found that often we were scoring the same content for 'using facts and evidence' and 'being clear about the process' which meant that we were double counting for one piece of evidence. We felt that this didn't accurately differentiate response content. Following moderation discussions, we have changed this principle to have three criteria:

- ❑ Tier 1: Clear about the process
- ❑ Tier 1: Use causal language to demonstrate the outcome with facts and evidence
- ❑ Tier 2: Balance of probability in decision making

We also used specific examples from the complaint responses to update the protocol for using the tool so

that we could give concrete examples of the content/wording that would correspond to each criteria to reduce misunderstanding or individual interpretation by future users.

2. How frequently were the four PJ Principles incorporated into written responses?

There appeared to be a positive change in frequency of each PJ principle although there was some variance between them from the baseline levels. Our R analysis showed that there was an increase in trust words, which links to the principle of trustworthy motives and the overall neutrality of positive/negative words.

The lowest overall score was for voice, both in the pre period and post period. Whilst it has improved, this is a bit of a concern given the emphasis to speak to each prisoner prior to responding within the process. This needs some further investigation to understand if there are any other barriers which have stopped this from happening.

3. How authentic/genuine did the response feel?

There was a slight unintended consequence with the signposting of information in the prototype which was not tailored to the individual response/case. This meant that people were referred to inappropriate or unsuitable additional support. This demonstrates the importance of testing even seemingly simple templates. We would therefore need to update the response template prior to any further implementation of the prototype.

We also found that whilst there was more consistency in readability scores in the post period responses, sentence length was too high, the average percentage of difficult words slightly increased and the reading age was 14-15 years. Again, all of these can be addressed by updating the prototype prior to any further implementation.

4. Did the impact of the template degrade over time?

We examined complaint responses over a period of 1 year and 4 months, from January 2019 to April 2020. There was no noticeable tapering off with the PJ score in the post period. This was one of the assumptions that we wanted to test in our theory of change.

Limitations

The biggest limitation is that there was no 'counterfactual' included in this study, and so we

cannot say with any certainty that these changes wouldn't have taken place without the prototype process.

HMP Buckley Hall has done a lot of work on PJ principles in other areas and scores highly on PJ and on staff/prisoner relationships.³² Again, we cannot say whether this type of approach would result in a similar change in a prison with a different culture, a different category/type of prison or a prison of a different size.

What next?

Given the promising findings, our intention is to test a revised prototype in a different Male Adult Category C prison to see whether we can replicate our findings elsewhere. With this second study, we will be able to test other pathways in the theory of change to try to understand more about how change is happening, with whom and why. We also intend to test the impact more rigorously with a more robust methodology that uses a comparison group who don't have access to the prototype. This will mean that we can be more certain of the causes of any impact. We will also utilise a larger sample in future testing, to ensure we can test for statistical differences in outcomes between the two groups.

If this is successful, we would then want to test scale-ability to see if the findings replicate in different contexts (different sizes/types/categories of prisons) that represent the broader organisation.

From a practical perspective, if the PJ tool proves to be reliable then this would be made available to prisons to monitor how well they adhere to complaints policy. The policy requires quality assurance of complaints each year and this tool could be used by prison staff for that purpose.

We also want to extend our understanding of whether we can 'bundle' multiple PJ practices together and whether this has positive spill over effects on to other everyday conversations. For example, we could look to compare introducing a process on complaints and cell searches in combination and test whether there is any difference on PJ scores compared to just implementing a process on complaints.

The ultimate goal is to improve security and safety in prisons. There is more chance of influencing these outcomes if we bundle PJ practices together but it is very difficult to disentangle the impact of PJ on these outcomes as they are influenced by many factors. However, in the longer term this is something that we would aim to do.

32. HMIP (2019). Report of an unannounced inspection of Buckley Hall by HM Chief Inspector of prisons. Retrieved from Buckley-Hall-Web-2019.pdf (justiceinspectorates.gov.uk)

When an Inspector Calls: Perceptions of Oversight among Prison Management

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Oversight in the form of inspection and monitoring is an increasingly prevalent feature of the modern prison landscape. The recent revisions to the European Prison Rules have highlighted the importance of inspection and monitoring for the purposes of ensuring the welfare of people in custody. However, there has been little empirical investigation of how growing oversight obligations have been experienced on the ground, or how the role of inspection is viewed by prison staff. Drawing on interviews with prison managers in the Irish prison system, this article examines experiences of engagement with Ireland's national prison inspectorate, the Office of the Inspector of Prisons. The study explores the different ways in which oversight obligations are understood as part of managerial work, as well as attitudes towards the inspection process. Analysis of these accounts identifies several ways by which engagement with this oversight body could be strengthened and improved.

Introduction

Prison oversight is regarded as essential for places of detention.¹ Although the efficacy of oversight may be contested, its function is to deliver greater transparency and accountability within prison systems.² Accordingly, oversight provides a fundamental safeguard for the rights and treatment of people in

custody.³ It also offers benefits to the prison administration and prison staff by promoting best practice and contributing to the creation of better prison conditions.⁴

Recent revisions to the European Prison Rules (EPR) (2020) have placed increased emphasis on the role of inspection and monitoring in European prisons.⁵ Rule 93.1 stipulates that prisons must be subject to independent monitoring, the findings of which must be made public, in order to ensure that the rights and dignity of prisoners are upheld. Rule 93.5 states that monitoring bodies have the authority to make recommendations to the prison administration. Moreover, Rule 93.6 ensures that the prison administration must respond to these recommendations, thereby demanding greater engagement with independent monitors. These revisions highlight that oversight obligations are becoming increasingly prescribed in the functioning of modern European prisons.

Bennett has written on the 'audit explosion' faced by prison managers in HM Prison Service and the increasing bureaucratic demands introduced under new public management.⁶ External to the prison, prisons are also subject to a growing 'web of accountability' or regulatory community.^{7 8} This comprises a network of actors each with their own regulatory function and specific areas of expertise — human rights, food quality, educational standards, environmental impact, health and safety — and the prison system is answerable to

1. Rogan, M. (2019) 'Prison inspection and monitoring: The need to reform European law and policy' *European Journal on Criminal Policy and Research*, 27: 285-305; Van Zyl Smit, D. & Snacken, S. (2009) *Principles of European Prison Law and Policy: Penology and Human Rights*. New York: OUP.
2. Deitch, M. (2021) 'But who oversees the overseers?: The status of prison and jail oversight in the United States' *American Journal of Criminal Law*, 47(2): 207-274; Deitch, M. (2010) 'Distinguishing the various functions of effective prison oversight', *Pace Law Review*, 30(5): 1438-1445.
3. Van Zyl Smit, D. (2007) 'Prisoners' rights' in Y. Jewkes (ed) *Handbook on Prisons*, pp.566-584, Devon: Willan.
4. Coyle, A. (2010) 'Professionalism in corrections and the need for external security: An international overview', *Pace Law Review*, 30: 1503-1511; Deitch, M. (2021) No. 2.
5. European Prison Rules (2020).
6. Bennett, J. (2016) *The Working Lives of Prison Managers: Global Change, Local Culture, and Individual Agency in the Late Modern Prison*, Hampshire: Palgrave MacMillan.
7. Frink, D., & Klimoski, R. (1998) 'Toward a theory of accountability in organizations and human resource management' in G.R. Ferris (ed), *Research in Personnel and Human Resource Management*, pp.1-51, Stamford: JAI Press.
8. Meidinger, E. (1987) 'Regulatory culture: a theoretical outline', *Law & Policy*, 9(4): 355-386.

each in turn. Stojkovic has argued that engagement with oversight *'will be the norm for prison leadership and management in the 21st century [...] the only question remains how they will adjust to this change'* (p.1391).⁹

Much like regulators, oversight bodies are endeavouring to 'steer' behaviour in a particular direction that aligns with their own explicit standards.¹⁰ Yet, oversight bodies are not regulators in the strictest sense; the methods of oversight are often less technically prescriptive, and furthermore oversight bodies do not always possess powers of enforcement which equip them to mandate change. It is clear from this literature that positive relationships are essential for conducive regulatory outcomes.¹¹ Cooperation, engagement, and a willingness to comply with oversight on the part of those who are overseen is desirable; and while it does not guarantee success, it increases the prospect of good oversight outcomes for both parties.¹²

Past research provides insight as to how external scrutiny is experienced in other settings. For example, Braithwaite found that nursing home managers demonstrated a wide variety of responses towards inspection — some managers were actively committed to oversight and its benefits; others were indifferent; and some were even oppositional.¹³ These differing 'motivational postures' were rooted in managers' attitudes towards the inspectorate and its objectives. In an ethnographic study of young offender institutions, Andow describes the 'institutional display' that takes place during inspection — staff's desire to ensure that the institution

is presented in the best possible light.¹⁴ However, this desire to be evaluated positively also led some staff to conclude that inspection fails to capture an accurate depiction of the environment. On inspection in the probation sector, staff have been found to welcome the opportunity to reflect on their work and find areas for improvement, while at the same time acknowledging the intensive time commitment that undergoing inspection entails.¹⁵

By comparison, little is known about how inspection is viewed in the prison environment. Evidence on inspection from other settings would lead us to anticipate that prison staff are also likely to demonstrate a variety of attitudes towards inspection and its perceived function; but the particularities of the prison culture — its closed nature, high staff solidarity, and being a low trust environment — may present

additional considerations as to how and why these attitudes are manifested.

Prisons are traditionally settings that reside out of the public eye. The literature on prison staff cautions of a strong organisational culture, one in which staff demonstrate high levels of in-group solidarity;¹⁶ consequently, prison staff can be wary of outside perspectives.¹⁷ Incomers can often be regarded as naïve and unknowledgeable,¹⁸ or as potentially posing a risk to

the organisation by drawing unwanted attention and creating 'negative visibility'.¹⁹ It is not a culture that easily admits those from the outside, and so outsiders must develop trust with prison staff. First-hand accounts of oversight practitioners operating in the prison environment have emphasised the need to build

It is not a culture
that easily admits
those from the
outside, and so
outsiders must
develop trust with
prison staff.

9. Stojkovic, S. (2010) 'Prison oversight and prison leadership', *Pace Law Review*, 30: 1476-1489.

10. Parker, C., & Braithwaite, J. (2003) 'Regulation' in P. Cane & M. Tushnet (eds) *The Oxford Handbook of Legal Studies*, pp.19-45. Oxford: OUP.

11. Ayers, I., & Braithwaite, J. (1995) *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: OUP.

12. Braithwaite, V. (1995) 'Games of engagement: Postures within the regulatory community', *Law & Policy*, 17(3): 225-256; Braithwaite, V. (2003) 'Dancing with tax authorities: Motivational postures and non-compliant actions' in V. Braithwaite (ed) *Taxing Democracy*, pp.15-40, Aldershot: Ashgate; Braithwaite, V. (2017) 'Closing the gap between regulation and the community' in P. Drahos (ed) *Regulatory Theory: Foundations and Applications*, pp.25-42, Canberra: Australian National University Press.

13. Braithwaite, V. (1995). see footnote 12.

14. Andow, C. (2020) 'Outsider inspections of closed institutions: An insider ethnographic view of institutional display', *Sociological Research Online*, 25(4), 682-697.

15. Phillips, J. (2021) 'An analysis of inspection in probation and its impact on practitioners, practice and providers', *Probation Journal*, Available at: <https://journals.sagepub.com/doi/full/10.1177/02645505211041577>

16. Arnold, H. (2005) 'The effects of prison work' in A. Liebling & S. Maruna (eds) *The Effects of Imprisonment*, pages 391-420, Devon:

Willan; Morrison, K., & Maycock, M. (2021) 'Becoming a prison officer: An analysis of the early development of prison officer cultures', *The Howard Journal of Crime and Justice*, 60(1): 3-24.

17. Crawley, E., & Crawley, P. (2008) 'Understanding Prison Officers: Culture, Cohesion, and Conflicts' in Bennett, J., Crewe, B. & A. Wahidin (eds) *Understanding Prison Staff*, pages 134-152, Devon: Willan.

18. Garrihy, J. (2020) 'There are fourteen grey areas': 'Jailing', professionalism and legitimacy in prison officers' occupational cultures', *Irish Probation Journal*, 17: 128-150.

19. Symkovych, A. (2020) 'Negative visibility and 'the defences of the weak': The interplay of a managerial culture and prisoner resistance', *Theoretical Criminology*, 24(2): 202-221.

positive professional relationships with management for oversight to run smoothly and effectively.²⁰ Here, this article makes its central contribution by exploring perspectives of prison oversight in situ, and identifying avenues by which conducive relationships can be fostered between prisons and oversight bodies.

Oversight in the Irish Prison System

This study captures experiences of oversight among senior prison managers in Ireland. The Irish prison system is relatively small, with a prison population rate of 78 per 100,000 people.²¹ A striking feature of the Irish prison system is that oversight has been demonstrably lacking until relatively recently. With the exception of the Visiting Committees,²² regular and dedicated prison oversight was largely left to the Department of Justice, which could not be regarded as impartial. It was not until the Office of the Inspector of Prisons (OIP) that Irish prisons were subject to scrutiny by an independent body.

The OIP was established in 2002 and placed on a statutory footing in 2007 under the Prisons Act (2007). The OIP is responsible for, inter alia, examining the effectiveness of the management of the prison estate, compliance with national and international standards, the health and welfare of people in custody, and the quality and availability of programmes and facilities. The OIP is obliged to carry out regular inspections of all prisons. To support this, the OIP has unrestricted access to the prison estate as well as all necessary documentation. The Office presents its inspection reports to the Minister for Justice, which upon review, are made public. Within these reports, the OIP issues recommendations for action within the prison system.

The OIP is obliged to carry out regular inspections of all prisons. To support this, the OIP has unrestricted access to the prison estate as well as all necessary documentation.

In 2020, the OIP launched the *Inspection Framework for Prisons in Ireland*, its first comprehensive framework for undertaking inspections.²³ Prior to this, inspection was guided by the OIP's *Standards*, which drew upon existing international instruments such as the Mandela Rules and the EPR, as well as the work of the Committee for the Prevention of Torture.²⁴ While this initial inspection model was a welcome development,²⁵ the specific details of the inspection process under the *Standards* remained ambiguous. It was unclear from inspection reports of this period as to the procedural steps of inspection or how the *Standards* were applied.

By comparison, the *Framework* sets out five explicit areas by which prisons will be evaluated. These include:

safety and security; respect and dignity; rehabilitation and development; health and well-being; and resettlement. Each area carries defined criteria by which performance can be assessed and relevant evidence can be gathered; these have been informed by national law, human rights obligations, and international best practice. The past two years have seen the OIP's most productive period to date, with thematic reports on the impact of COVID-19 undertaken in every prison. However, to date, a full inspection has not yet been completed using the *Framework*. Moreover, the regularity of inspections has been criticised;²⁶

and many prisons have yet to receive a full inspection.

As the national inspectorate, the OIP plays a central role in the oversight of the Irish prison system. But it is also a relatively new oversight relationship. The regulation literature informs us that motivation to comply with oversight as well as the level of compliance can differ greatly from individual to individual.²⁷ The literature also posits that individuals who have a

20. Bicknell, C., Evans, M., & Morgan, R. (2018) *Preventing Torture in Europe*, Strasbourg: Council of Europe; Casale, S. (2010) 'The Importance of Dialogue and Cooperation in Prison Oversight', *Pace Law Review*, 30: 1490-1502; Owers, A. (2007) 'Imprisonment in the twenty-first century: a view from the inspectorate', in Y. Jewkes (ed), *Handbook on Prisons*, pp.1-22. Devon: Willan.

21. Figure correct as of February 2022, obtained from <https://www.prisonstudies.org/country/ireland-republic/>

22. The role of the prison Visiting Committees is similar to that of the Independent Monitoring Boards operating in England & Wales. Under the Prisons (Visiting Committees) Act, 1925, each prison has a Visiting Committee consisting of members of the public appointed by the Minister for Justice.

23. Office of the Inspector of Prisons (2020) *A Framework for the Inspection of Prisons in Ireland*, Nenagh, Ireland: OIP.

24. Office of the Inspector of Prisons (2009) *Standards for the Inspection of Prisons in Ireland*. Available at: <https://www.oip.ie/wp-content/uploads/2020/04/Standard-for-the-Inspection-of-Prisons.pdf>

25. Martynowicz, A. (2011) 'Oversight of prison conditions and investigations of deaths in custody: international human rights standards and the practice in Ireland' *The Prison Journal*, 91(1): 81-102.

26. Irish Penal Reform Trust (2022) *Progress in the Penal System: The Need for Transparency*, Dublin: IPRT.

27. Ayers & Braithwaite (1995), see footnote 11.

positive evaluation of the oversight body, their objectives, and their processes are more likely to be compliant and to demonstrate positive engagement.²⁸ Accordingly, this analysis examines how engagement with inspection is experienced on the ground by prison managers. It illuminates attitudes towards prison inspection as well as some existing tensions and opportunities for improvement within this oversight relationship.

Methodology

In-depth interviews were conducted with 35 prison managers from the Irish Prison Service (IPS). Participants included staff at Governor and Chief Officer grades, in addition to senior administrative staff from IPS headquarters. Collectively, participants had worked in all 12 prisons across the prison estate. Interviews explored participants' experiences of oversight and accountability in the Irish prison system, as well as interactions with the OIP. All interviews took place between October 2018 and May 2019; at this time, the Framework had not yet been implemented although many participants were aware of the basic tenets of the new inspection model. All interviews were transcribed verbatim and analysed through thematic analysis.²⁹

Findings

The findings concentrate on two areas. The first area concerns how oversight through inspection is interpreted as part of wider managerial responsibilities. Oversight obligations are an aspect of prison management that have been underexamined within the prison literature. Second, this study explores how the process of inspection is viewed by prison managers. Three aspects of the inspection process are identified as important for building trust, credibility, and legitimacy from the perspective of those who are overseen. This study highlights ways in which trust could be bolstered, illuminating constructive steps that both the IPS and the OIP could undertake in

this regard. These findings are not limited to the inspectorate, but are generalisable to oversight relationships of other kinds such as audit bodies, prison monitoring bodies, Ombudsmen, and NGOs.

The Function of Inspection for Managers

A primary function of oversight is to evaluate whether an organisation is operating in line with laws, regulations, policy, standards, or organisational objectives.³⁰ It objectively determines whether '*we are running the place correctly*' (Participant 14), and that '*all the boxes are ticked and [...] and what you're doing is within the rules and regulations*' (Participant 25). Interpreting oversight as 'assurance of performance' was a perspective that aligned with the tenets of managerialism.³¹ Specifically, participants conceived of

oversight as a way to assess concerns of policy adherence, standardisation, efficiency, use of resources, and fulfilling the organisational mission statement, all culminating in an evaluation of '*the service we deliver*' (Participant 12). Participants referenced that similar activities are implemented across the public sector for the purposes of transparency and accountability.

Framed like this, oversight was perceived as non-threatening; answerability to oversight obligations was not a demand unique to prison managers but an expected duty

of management within the public sector. For managers who viewed oversight in this way, inspection was often likened to audit; the language of human rights was almost entirely absent, and inspection was described as a technical process of evaluation against standards. Yet, the OIP is not an audit body; it is an oversight body grounded within the principles of human rights.³² As such, this outlook on oversight can invertedly disregard the ethos that underpins the work of the Office.

A second function of oversight is that it provides an avenue for organisational improvement. It is through this function that the organisation may most easily recognise the benefits of oversight.³³ Therefore, it is a

Three aspects of the inspection process are identified as important for building trust, credibility, and legitimacy from the perspective of those who are overseen.

28. Braithwaite, V. (1995; 2003; 2017), see footnote 12.

29. Braun, V. & Clarke, V. (2006) 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, 3(2): 77-101.

30. Aucoin, P. & Heintzman, R. (2000) 'The dialectics of accountability for performance in public management reform', *International Review of Administrative Sciences*, 66(1): 45-55; Shute, S. (2013) 'On the outside looking in: reflections on the role of inspection in driving up quality in the criminal justice system', *The Modern Law Review*, 76(3): 494-528.

31. Hood, C. (1995) 'The 'new public management' in the 1980s: Variations on a theme', *Accounting, Organizations and Society*, 20(2-3): 93-109.

32. OIP (2020), see footnote 23.

33. Aucoin & Heintzman (2000); Shute, S. (2013); see footnote 30.

function that both the organisation and the oversight body should seek to impress upon staff to encourage engagement. Yet, accounts of interactions with the OIP demonstrated that this function was not uniformly embraced within IPS.

For some participants oversight presented a 'learning opportunity' (Participant 15). The OIP offered a fresh independent perspective or 'a different lens' (Participant 7) through which the status quo could be challenged. Examples of positive organisational developments attributed to the OIP included the introduction of standardised committal procedures, a formalised prisoner complaints system, checklist procedures for prisoners placed on special observation, in-cell sanitation, and physical improvements to the estate. In contrast, other participants were reluctant to acknowledge the contribution of the OIP, citing that its recommendations amounted to 'stuff we would be and should have done anyway' (Participant 22) or 'stuff we have been canvassing for, for years' (Participant 27). They viewed organisational developments as largely intrinsically driven and downplayed the ability of the OIP to bring about change.

Alternatively, some interviewees actively capitalised on this function of oversight. They regarded the experience of undergoing inspection as an opportunity that could be leveraged, not necessarily for wider organisational improvement, but in service of their own managerial objectives. Engagement with the inspectorate could be used to draw attention to specific challenges within the prison or broader systemic issues. The inspectorate offered political influence and was therefore appropriately positioned to prompt change, 'the Governors shouting doesn't have the same effect as an Inspector of Prisons' (Participant 3). Inspection reports could bolster existing calls for action or potentially motivate the issuance of additional resources. Participant 11 summarised their experience with the OIP, stating,

'A lot of change happened here because [the Inspector] would come in and find it. [...] if somebody with his clout is saying it's wrong, I

could be banging that drum every day of the week and nobody listens but if he comes in and puts it in his report?'

A third function of oversight is that it exerts a check on power-holders. Oversight of this kind is usually initiated in response to major institutional failings or serious adverse events. This function is particularly exigent within prison as staff hold a considerable degree of power over those in custody,³⁴ consequently, oversight provides a necessary safeguard against abuse of power.³⁵ Participants appreciated this function, acknowledging that without external scrutiny prison 'could become a dark place very quick' (Participant 22). For this reason, the ability to monitor the proportional and justified exercise of power in prison was essential, 'that's why we need the Inspector' (Participant 2).

Finally, some participants expressed that oversight functioned as a conduit for blame. There was a perception among these participants that external scrutiny is only triggered in response to adverse events. It is an activity that generates 'negative visibility', drawing public attention and potentially reputational damage.³⁶ On this, Participant 21 summarised, 'when things go right nobody comes near us, when things come wrong they have to'. Thus,

oversight was viewed as a reactionary process rather than a consistent obligation; it served to identify those who were culpable for a wrongdoing. Crucially, this perception was not confined to the work of the OIP, but external oversight in general.

That oversight was perceived in this way appeared to stem from IPS's wider organisational culture, which participants described as a 'blame game culture' (Participant 24) — one that is fixated on apportioning fault. Though participants acknowledged that this culture was improving, the language regarding blame within the organisation was still visceral: 'we're very quick to point fingers and cut heads off' (Participant 5), 'they want to know who can we hang' (Participant 15), 'want a body for this' (Participant 9). External oversight, like inspection, identifies issues which in turn generates finger-pointing within the organisation. The blame

Engagement with
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systemic issues.

34. Crewe, B. (2007) 'Power, adaptation, and resistance in a late-modern men's prison', *British Journal of Criminology*, 47: 256-275; Sykes, G.M. (1958) *The Society of Captives: A Study of a Maximum Security Prison*. New Jersey: Princeton University.

35. Rogan (2019), Van Zyl Smit & Snacken (2009), No. 1; Van Zyl Smit (2007), see footnote 3.

36. Symkovych (2020), see footnote 19.

culture obfuscates the benefits of oversight, instead framing oversight in terms of its potential harm to the individual or the wider organisation.

Although this perception exists alongside positive interpretations of oversight obligations, this finding suggests that, at present, the organisational culture is not one in which oversight obligations comfortably reside. The literature advocates that organisations must firmly embed the concept of accountability within organisational culture. This involves deep consideration of external accountability relationships, the nature, purpose, and extent of oversight demands, and how accountability should be modelled by staff within the organisation.³⁷

Impressions of the Inspection Process

Attitudes towards an oversight body and its methods considerably influence compliance and engagement.³⁸ This section explores interviewees' reflections on the inspection process. It focuses on three aspects of inspection which can undermine how the inspection process is perceived by prison managers. Their identification is telling of aspects of the oversight process that are important for credibility and legitimacy in the eyes of those who are overseen. Therefore, we propose that the points raised are not limited to prison inspection, but generalisable to oversight relationships of other kinds.

Communicating Methodology

The importance of communicating clear standards of assessment, as well as the means by which the prison is evaluated, emerged clearly from this study. As previously noted, at the time of data collection, the OIP was without a formalised inspection framework. The absence of an explicit framework meant that many prison managers were unclear as to the how the Office carried out an inspection in practice. Even among participants with direct experience of prison inspections, descriptions of what the process entailed under the old model were vague and ambiguous, *'it has*

been almost as if a few people wander in and look around the place and talk to a few people and then go off and write a report' (Participant 29).

Among the majority of participants, this absence of processual clarity was not a major concern; it was as though the inspection process was solely of consequence to the oversight body, rather than those faced with the inspection and the resulting recommendations. Again, this is reflective of an organisational culture that has not developed strong cultural norms towards oversight and accountability, and what inspection should mean for the organisation. However, by contrast, among some participants, a transparent inspection methodology was clearly valued and desired. These individuals emphasised the importance of understanding how findings are reached,

as well as understanding the evidence that underpins inspection recommendations. The traces of this process were not always apparent and, consequently, this undermined how the resulting reports were perceived. On this, Participant 32 remarked,

'It was anecdotal. [...] You have to have evidence to say here's what we saw, here's the dates, here's the times, here's how it was. You know, and it has to be specific.'

This point underscores the importance of communicating the procedural elements of inspection in the form of standards, process, and evaluation, such that *'everyone knows where they're coming from'* (Participant 18). Former HM Chief Inspector of Probation Rod Morgan previously emphasised how a transparent, rigorous and replicable methodology is important for the credibility and legitimacy of inspection.³⁹ Likewise, for those subject to such processes, transparency is essential to establish legitimacy.⁴⁰ We argue that methodological transparency is an important aspect for the work of any oversight body.

Crucially, the responsibility of raising awareness of the inspection process and standards should not rest with the oversight body alone. Both the OIP and the IPS

37. Hall, A.T., Bowen, M.G., Ferris, G.R., Royle, M.T., & Fitzgibbons, D. (2007) 'The accountability lens: A new way to view management issues', *Business Horizons*, 50(5): 405-413; Dekker, S. (2017) *Just Culture: Restoring Trust and Accountability in Your Organisation*, Boca Raton: CRC Press.

38. Braithwaite, V. (1995; 2003; 2017), see footnote 12.

39. Morgan, R. (2004) 'Thinking about the future of probation inspection', *The Howard Journal of Criminal Justice*, 43: 79-92.

40. Tyler, T. (1990) *Why People Obey the Law*, New Haven: Yale University Press.

should play a role in communicating this to staff at all levels. At the time of the interviews, plans for the Framework had been shared with management and participants appeared to welcome the tenets of the new inspection model. That the new framework would be based on explicitly defined standards was regarded as a positive development in that it would provide management with greater transparency as to how prisons would be objectively evaluated.

Recognising Strengths

There was broad agreement that inspection must report on failings or issues identified during the visit. However, some participants perceived that reports invariably fixated on negative findings and did not acknowledge strengths and good practice. This led to the sentiment that *'all that was ever highlighted was the negatives'* (Participant 1). Arising from this the perception of being overly or unjustly critiqued could easily become discouraging. Participants spoke about feeling despondent in the face of inspection reports that were predominantly negative, commenting that *'people just give up'* (Participant 1) and *'become ambivalent as an organisation to criticism'* (Participant 8).

Among a few participants the perception of negative reporting went one step further. They regarded the inspectorate as actively seeking to find fault or being 'led by an agenda' to do so. In other words, the inspection team was perceived to have pre-determined what they will report on before they enter the prison. For example, Participant 26 remarked, *'I always feel anyway they know what they're looking for before they come in.'* Accordingly, the perception that reports overly concentrated on negative findings could foster cynicism and distrust towards the inspectorate. This reemphasises the need for explicit and transparent areas of focus for inspection to combat this belief.

By virtue of its function, oversight will inevitably uncover criticisms and it is the duty of oversight bodies to call attention to any issues uncovered. Inspection should not endeavour to balance negative and positive findings. However, the inclusion of observed good

practice and strengths can provide an opportunity to share lessons learned for wider organisational improvement.⁴¹ Writing on prison oversight, Seddon has previously argued that inspection should present critique alongside praise and the recognition of good practice for this very purpose.⁴² We propose that this is an important consideration for any oversight body aiming to 'steer' the organisation under scrutiny.

Assigning Recommendations

Prison managers cautioned that recommendations can be less successful when they are without true ownership. Participants explained that inspection reports often identify issues and recommendations rooted in wider systemic issues; yet, because the inspection report is attached to a specific prison responsibility for addressing these issues can be perceived to rest with the prison Governor. This can prove to be a source of frustration in that prison managers are charged with the responsibility for a recommendation but without the requisite authority to resolve the issue at its centre. For example, Participant 8 remarked,

'The prison Governor does not have a choice not to take in prisoners, yet he is publicly criticised for prisoners sleeping on the floor of the prison. [...] it's very frustrating from a Governor's perspective to sit there and be criticised by an Inspector [...] Or that there's a lack of services or that there's a poor infrastructure.'

As such, when accountability is directed to those without the matched capacity to act, the implementation of recommendations is met with little progress. Often, *'a higher level of accountability'* (Participant 13) is necessary, requiring action by IPS Directorates, the Department of Justice, or the Minister. As such, for recommendations to be successful the OIP *'needs to hold the right person to account'* (Participant 8).

This issue is not confined to oversight through inspection. Previous research by Tomczak on death in

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41. Aucoin & Heintzman (2000); Shute (2013), see footnote 30.

42. Seddon, T. (2010) 'Rethinking prison inspection: Regulating Institutions of Confinement' in H. Quirk, T. Seddon, & G. Smith (eds) *Regulation and Criminal Justice: Innovations in Policy and Research*, pp. 261-282, Cambridge: CUP.

custody investigations by the Prisons and Probation Ombudsman (PPO) notes that their reports frequently highlight systemic issues such as effectiveness of committal screening processes or the wider issue of mental health.⁴³ Tomczak argues that oversight bodies need to be cognisant of directing recommendations towards those with the ability to initiate genuine change, and to attribute clear responsibility for action. Otherwise, recommendations can become ineffectual as a result. The findings of the present study concur with this research, and further propose that this consideration is equally applicable to other bodies who issue calls for action such as prison monitoring bodies, auditors, and NGOs; it demonstrates that ownership is important for the effective implementation of recommendations.

Conclusion

Prisons are facing greater external scrutiny than ever before. Answerability and accountability to oversight mechanisms now form an indisputable component of prison management.⁴⁴ This study has examined the perspectives of Irish prison managers on oversight, focusing on their interactions with the OIP. It depicts the different ways in which prison managers experience oversight obligations as part of their wider managerial responsibilities. Oversight in prison is regarded as a means of assurance, an opportunity for learning, and offers a check on power — functions which have been readily observed in other work settings and jurisdictions. Additionally, this study has provided insight into what can be unintentionally gained and lost through the application of these functional interpretations.

Participant accounts also demonstrated that oversight can be associated with blame or perceived as a potential cause of organisational harm. Oversight has the capacity to draw 'negative visibility' towards the prison, and prison staff may in turn desire to 'protect' themselves from such harm. This has been previously noted by Symkovich in his research on prisoner complaints in the Ukrainian prison system.⁴⁵ As such, defensive attitudes to oversight and towards oversight

bodies are unlikely to be confined to the IPS but observable in other prison services also — particularly where oversight bodies are viewed as adversarial or are perceived to pose a threat to the organisation.

As the 'web of accountability' continues to expand, it is vital that these important oversight relationships are both constructive and effective. In order to secure both legitimacy and compliance, the processes used by those in positions of authority must be regarded as transparent and fair by those subject to them.⁴⁶ Explorations of participants' experiences with inspection has illuminated ways in which the inspection process may, from their perspective, become delegitimised. This includes a lack of methodological transparency, negative reporting, and the assignment of recommendations. From the perspective of the overseen, these constitute important considerations for the conduct of inspection; however, for the achievement of legitimacy and compliance their application could arguably be extended to oversight processes of other kinds. Accordingly, we propose that methodological transparency, the nature of reporting, and the assignment of recommendations bears important implications for the conduct of prison oversight by other bodies — Ombudsmen, prison monitoring bodies, auditors, and NGOs — as well as to the conduct of prison oversight by bodies in other jurisdictions.

Oversight is most successful when there is cooperation and a willingness to engage, but oversight obligations and relationships do not exist within a vacuum. This analysis has highlighted the need for prison services to explore where oversight obligations sit within their wider organisational culture. This entails exploring the potential benefits of oversight for the organisation, fostering positive attitudes to oversight, and potentially addressing perceived blame cultures within their organisation. In the Irish context, the principles of the new Framework for inspection appear promising. Its implementation for full inspections presents an excellent opportunity to visit the impact of this new methodology on staff engagement and attitudes towards inspection.

43. Tomczak, P. (2019) *Prison Suicide: What Happens Afterwards?* Bristol: Bristol University Press.

44. Stojkovic, S. (2010), see footnote 9. European Prison Rules (2020).

45. Symkovich (2020), see footnote 19.

46. Tyler (1990), see footnote 40.

Prisoner Death Investigations: Setting the Agenda for Change

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There are around 11.5 million prisoners globally. Amongst prisoners, mortality rates are as much as 50 per cent higher than in the outside community, although prisoner mortality has received relatively limited scholarly attention.¹ All deaths in state detention threaten the fundamental human right to life so must be investigated under (inter)national law. For example, Article 2 of the European Convention on Human Rights includes a duty to investigate potential violations of the right to life within the Council of Europe's 47 member states. Death investigations have significant potential to reduce the extensive harms and costs of prisoner deaths, but these investigations have barely been analysed or developed internationally.² This article reports findings from a research project exploring how the Prisons and Probation Ombudsman in England and Wales (PPO) (seek to) effect change and improve prison safety through their investigations, particularly for self-inflicted deaths.

Prison suicides cause (enduring) harm across stakeholders including bereaved families, prisoners, prison staff and death investigators, and negatively affect staff wellbeing, absence, and prison regimes.³ Suicides in locales can also lead to further deaths through 'clustering', potentially compounding the risks,

harms, and costs of each death. 'Clustering' can result from changes to prisoner behaviour, regime disruptions and changes in staff practice, such as increased fear and risk aversion after deaths.⁴ Given the substantial harms and costs of prison suicide, it is urgent and essential to establish how investigations could more effectively prevent some deaths. In England and Wales, self-inflicted death rates amongst prisoners more than doubled between 2012 and 2016, when they hit record numbers: creating widespread harm and draining hundreds of millions of pounds from public funds.⁵ England and Wales are in the 'very high' categories for both prison suicide rate and imprisonment rate amongst their European comparators, according to the most recent SPACE 1 figures.⁶ Annual reports consistently highlight that the PPO make the same recommendations to the same identified failings and that fatal incident investigations do not make prisons safer overall.⁷ Our research project has indicated reasons for this impasse, illustrating many new opportunities for analysis and action, which have been published in summary and long form.⁸ In this article, we advance these publications by highlighting foundational areas that require attention: the underpinnings or bases upon which PPO investigations and clinical reviews are undertaken.

Prisoner death investigations have evolved over time and been affected by various factors, including

1. UNOHCHR (2019) *Human rights in the administration of justice*. http://fileserv.idpc.net/library/OHCHR%20-%20Human%20rights%20in%20admin%20of%20justice%20A_HRC_42_20.pdf
2. Correctional Service Canada (2018) *Fourth Independent Review Committee on Non-natural Deaths in Custody*. <https://www.csc-scc.gc.ca/publications/092/005007-2310-en.pdf>
3. Banwell-Moore R, Tomczak P, Wainwright L, Traynor C and Hyde S 'The human toll': Highlighting the unacknowledged harms of prison suicide which radiate across stakeholder groups. *Incarceration* 3(2): 1–20. <https://doi.org/10.1177/26326663221097337>
4. Tomczak P (2022) Highlighting 'risky remands' through prisoner death investigations: people with very severe mental illness transitioning from police and court custody onto remand. *Frontiers in Psychiatry* 13. <https://doi.org/10.3389/fpsy.2022.862365>
5. Tomczak P (2021) Reconceptualizing multisectoral prison regulation: Voluntary organisations and bereaved families as regulators *Theoretical Criminology OnlineFirst*. <https://doi.org/10.1177/1362480621989264>
6. Council of Europe (2021) *Prison Populations: Space 1*. https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022__SPACE-I_2021_FinalReport_220404.pdf
7. PPO Annual Reports. <https://www.ppo.gov.uk/document/annual-reports/>
8. See also: i) Tomczak P and Banwell-Moore R (2021) *Prisoner death investigations: Improving safety in prisons and societies? Summary of findings* https://www.safesoc.co.uk/wp-content/uploads/2021/10/UoN_Prisoners_Death_Investigation_Report-FINAL-WEB-VERSION.pdf;
iii). Tomczak P and Cook E (2022) Bereaved family 'involvement' in (prisoner) death investigations: whose 'satisfaction'? *Social and Legal Studies OnlineFirst* <https://doi.org/10.1177/09646639221100480>;
iv). Tomczak P, Quinn K, Traynor C, Wainwright L and Hyde S (forthcoming) Reconstructing individualised prisoner death investigations: naming the Prisons and Probation Ombudsman's silence on systemic hazards found across the national prison estate.

e.g., the implementation of the *Human Rights Act 1998*, particularly the Article 2 requirement for independent investigations. At present, both PPO death investigations and clinical reviews inform coroners' inquests. Inquests are robustly underpinned by law and are only concerned with matters that caused or contributed to the circumstances in which people died. The PPO ostensibly works 'together with coroners to ensure as far as possible that the full facts are brought to light and any relevant failing is exposed, any commendable action or practice is identified, and any lessons from the death are made clear'.⁹ NHS England or the Healthcare Inspectorate of Wales commission clinical reviews, which investigate the clinical issues relating to deaths in custody. The PPO incorporate clinical reviews into their fatal incident investigation reports, which are provided in draft form to coroners and interested parties, and then published on the PPO's website after the inquest has concluded. In this article, we demonstrate that the underpinnings, or bases for PPO reports and clinical reviews are currently unclear, perhaps as a result of the piecemeal evolution of prisoner death investigations. We argue that increased transparency about the bases upon which both these investigations are undertaken and draw conclusions would have valuable implications that reach across stakeholder groups.

We demonstrate that, in practice and implicitly, the PPO investigate the compliance of staff in individual prisons with local and national prison policy. Clinical reviewers seem to focus on compliance with NHS and prison policy and examine whether deceased prisoners' care was equivalent to care in the community in a general sense, without having specialist understanding of particular diseases.¹⁰ Because the PPO, clinical and coroner investigations into each death overlap and diverge, it is particularly important that they are undertaken with a transparent basis, that all stakeholders can understand. It would also likely be useful for the PPO and clinical review bodies to reappraise their bases and the assumptions underpinning their work, reconsidering their utility to prisoner death prevention and coherent prisoner death

investigations. We conclude that the PPO could valuably either revise its *Terms of Reference* to reflect its existing investigation of staff compliance with local and national prison policies or broaden its activities in order to do what its *Terms of Reference* imply.

Methodology

This project resulted from a collaboration between the University of Nottingham and the PPO beginning in early 2019, which sought to strengthen the PPO's impact on prison safety by shifting focus from outputs (investigating every death and producing reports of those investigations) to outcomes (how the PPO could make it more likely that reports would lead to change and improvement). This article reports findings from this project, which ran from 2019-2021, examining how the PPO seek to impact prison safety through death investigations. Within this project, 45 semi-structured interviews were undertaken with diverse stakeholders in England and Wales including Coroners, PPO staff, prison staff and bereaved families. In this article, we focus on data from interviews with nine Coroners. Coroners are scarcely empirically researched, so their perspectives offer particularly original data.¹¹ Moreover, Coroners made the most fundamental critiques of the PPO's operating assumptions,

perhaps because Coroners have more distance from deaths than the other participant groups.

The semi-structured interview technique enabled participants to express complexities in their answers and generated rich data. Nine coroners volunteered to participate following an invitation sent to all area Coroners in England and Wales. Interviews were undertaken in Summer 2020 via telephone or Microsoft Teams, due to the COVID-19 pandemic. Our sample was purposive and participation was self-selecting, which is appropriate for this exploratory analysis in a novel area of inquiry, but as such we make no claim to representativeness across coroners. Ethical approval was obtained from the University of Nottingham. Interviews lasted between 30 and 75 minutes and were all audio recorded with participants' consent. Data have

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9. PPO (2021) *Terms of Reference*, p. 9-10 <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkhjmgw/uploads/2021/12/PPO-2021-Terms-of-Reference.pdf>

10. <https://www.england.nhs.uk/wp-content/uploads/2018/10/non-foreseeable-death-clinical-reviewer-template.doc>

11. Baker D (2016) Deaths after police contact in England and Wales: the effects of Article 2 of the European Convention on Human Rights on coronial practice. *International Journal of Law in Context*, 12, 162-177.

been anonymised. Interview topics included: i) how the PPO seeks to effect change in prisons following a death, ii) whether these actions had the intended effects and iii) if and how the PPO adjusts its actions to better effect change. Coding of transcripts produced the prevalent themes across participants. Anonymised interview transcripts for participants who consented to data sharing, plus supporting information, are available from the UK Data Service, subject to registration (DOI: 10.5255/UKDA-SN-855785). We now explore our findings.

Results

Lack of an explicit basis for PPO findings

Coroners explained how PPO reports provided a useful 'starting point' for inquests, helping generalist coroners to navigate specialist 'prison files' and signpost, without determining, issues for the inquest.

CORONER 1 They are giving you a very good starting point, [...] picking up on those issues which obviously become significant issues for the Inquest, [...] a foundation point.

CORONER 2 It gives you an overview. [...] I wait for the report to come in and it gives me a flavour of what's happened.

The PPO report is an important offering to inform the inquest because of the nature and complexity of deaths in prisons, amidst circumstances which can be challenging for outsiders to fully grasp:

CORONER 6 I wouldn't dream of doing an unnatural death in prison without one.

Despite these valuable contributions, the current focus of PPO investigations is akin to an internal

organisational review, which potentially results from the PPO's predecessor internal Prison Service death investigations as undertaken before 2004. In practice, the PPO's investigations and findings almost always focus on frontline prison staff compliance with local and national prison service policies.¹² Coroner 8 considered that the PPO report was effectively a review for the Prison Service, although this is not explicitly stated by the PPO.

CORONER 8 It's (the PPO report) a framework within which to formulate my own investigation, my own questions, my own direct line of inquiries (the inquest). [...] They (the PPO) are directed at [...] the Prison Service, really.

It is problematic that the PPO's relatively narrow practice of examining compliance with local and national Prison Service policy is not reflected by its Terms of Reference, which are worded expansively.

It is problematic that the PPO's relatively narrow practice of examining compliance with local and national Prison Service policy is not reflected by its *Terms of Reference*, which are worded expansively. The PPO ostensibly seeks: 'to ensure [...] that the full facts are brought to light and [...] examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence.'¹³ In practice, the PPO rarely engages with issues not covered by prison service policies. This means that,

for example, bereaved families' questions may not be answered (e.g., why their relative was not sectioned in hospital rather than imprisoned)¹⁴ and means that the PPO misses opportunities to highlight systemic issues, such as the remanding of people with severe mental illness to prison rather than hospital.¹⁵

By way of illustration, the sad case of Mr Lewis Francis is useful. Mr Francis died at 20 years old whilst remanded at HMP Exeter, England on 24th April 2017. His alleged crime occurred whilst he was acutely psychotic, on 15th February 2017 and continuing psychosis meant he was deemed unfit to be interviewed by Avon and Somerset Police at Bridgwater

12. Tomczak P and McAllister S (2021) Prisoner death investigations: a means for improving safety in prisons and societies? *Journal of Social Welfare and Family Law*. 43(2), 212-230, <https://doi.org/10.1080/09649069.2021.1917714>

13. PPO (2021) *Terms of Reference*, p. 9-10 <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkmgw/uploads/2021/12/PPO-2021-Terms-of-Reference.pdf>

14. Tomczak P and Cook E (2022) Bereaved family 'involvement' in (prisoner) death investigations: whose 'satisfaction'? *Social and Legal Studies OnlineFirst* <https://doi.org/10.1177/09646639221100480>

15. Tomczak P (2022) Highlighting 'risky remands' through prisoner death investigations: people with very severe mental illness transitioning from police and court custody onto remand. *Frontiers in Psychiatry* 13. <https://doi.org/10.3389/fpsy.2022.862365>

Custody Suite. On 17th February 2017, the day of Mr Francis' remand to prison, a doctor recorded that he was 'agitated and distressed [...], displayed evidence of thought disorder and [...] was severely disinhibited'.¹⁶ This doctor recorded 'serious concerns as to whether prison was an appropriate environment for Mr Francis [...]', pointing out that the pre-custody psychiatric report 'did not give a clear reason why Mr Francis was processed through the criminal justice system'. This prison doctor 'asked for an urgent mental health assessment to be carried out', however this 'urgent' assessment, which could have facilitated secure hospital treatment, was not carried out before Mr Francis' self-inflicted death. Mr Francis was therefore imprisoned between 17th February and 24th April 2017 without a criminal conviction, whilst acutely unwell and without having had a mental health assessment. Significantly, the PPO report made no recommendations in Mr Francis' case, given that prison staff had appropriately referred him for a mental health assessment and that HMP Exeter had complied with local and national prison policies in this case. Although the PPO report notes that 'Mr Francis' mother wanted to know what consideration, if any, was given to sectioning her son under the Mental Health Act', the PPO neither engaged with this substantive issue nor addressed its absence in their published report.¹⁷ According to Coroner Rheinberg,¹⁸ whilst in police custody, Mr Francis' condition 'mandated a transfer to a medium secure mental health hospital for an assessment and/ or treatment under section 2 and / or 3 of the Mental Health Act 1983'. Nevertheless, no ready facility existed for such a transfer, meaning that Mr Francis was remanded to prison. In contrast to zero recommendations from the PPO, Coroner Rheinberg made a series of findings in a prevention of future deaths report. Without understanding that the PPO currently assess compliance with local and national prison service policies, it is challenging to make sense of

Coroners, a core audience with whom the PPO should be 'working together' per their own Terms of Reference, were themselves not clear about the basis for the PPO's investigations.

the diverging findings of the PPO report and the inquest, which may confuse prison staff and affect the trust and confidence of bereaved families in the process.

Moreover, Coroners, a core audience with whom the PPO should be 'working together' per their own *Terms of Reference*, were themselves not clear about the basis for the PPO's investigations.

CORONER 9 I don't know if I have a handle on what the goal really is of them sometimes. I read the Terms of Reference and I'm sometimes thinking okay.....

Relatedly, Coroner 3 explained that the PPO were not sufficiently transparent about their processes and the burden of proof applied in their investigations and reports.

CORONER 3 There are uncertainties as to the standard of proof. [...] I'm from a legal background, so I'm concerned to establish that we prove everything, [...] the balance of probabilities, [...] whereas I've no idea what standard the PPO works to because it's never made plain in their investigations. [...] I don't know how they conduct things, how much they press

or challenge, whereas in my Courts, the evidence is given on oath or affirmation. (emphasis added).

These disconnects and uncertainties are amplified in importance because the PPO and Coroner essentially undertake 'parallel' investigations into each prisoner death (Coroner 5), meaning that there is substantive potential for confusion and mistrust, which makes it particularly important for all parties to be transparent:

CORONER 3 The overarching concern that I've got is [...] overlapping inquiries. [...] I have a

16. P6 of PPO (2018) *Independent investigation into the death of Mr Lewis Francis a prisoner at HMP Exeter on 24 April 2017*. <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkmgw/uploads/2020/03/F3141-17-Death-of-Mr-Lewis-Francis-Exeter-24-04-2017-SI-18-21-20.pdf>
17. P3 of PPO (2018) *Independent investigation into the death of Mr Lewis Francis a prisoner at HMP Exeter on 24 April 2017*. <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkmgw/uploads/2020/03/F3141-17-Death-of-Mr-Lewis-Francis-Exeter-24-04-2017-SI-18-21-20.pdf>
18. Rheinberg N (2020) *Regulation 28: Report to prevent future deaths*. Retrieved from <https://www.judiciary.uk/wp-content/uploads/2020/04/Lewis-Francis-2020-0074.pdf>

statutory duty to investigate a death. Now the PPO then comes along and carries out their own investigation, reaches conclusions. [...] So [...] there's a risk that we will get in a bit of a muddle. [...] We need to be clear as to what exactly is our mission, when we have people in different orbits and different timescales applying different rules.

Whilst Coroners are working to remits set out in law, the PPO's remit is less clear.

CORONER 2 My statutory requirements are 'how the person' died but their remit is slightly different.

As such, the PPO considers factors that *did not cause the death* and made recommendations that were not directly linked to the death, hence fall beyond the remit of Coroners. For example, the PPO considered issues such as the completion of paperwork in suicide risk management processes, e.g., recommending that staff should be 'Completing ACCT documents fully and accurately'.^{19 20} Whilst the longer PPO report usually states whether such compliance issues would have made a difference to the outcome in each death, this is not always clear in their recommendations section, where stakeholders' attention is likely to be focussed.

CORONER 1 Quite often (PPO) recommendations aren't really linked to the death.

CORONER 3 Their (PPO) remit differs from mine, [...] they will look at things that didn't cause the death.

CORONER 8 If I was being brutally candid, [...] the (PPO) recommendations, I take less heed of. [...] I'm looking at the circumstances that directly led to the cause of death. [...] Because

some documentation hasn't been completed properly, [...] not every case will have had an impact on the circumstances of the death. [...] That they haven't ticked a box on a form, it doesn't mean [...]. They (the PPO) [...] make recommendations [...] on matters that don't go [...] to the cause of death and the circumstances that directly led to the death.

It would therefore be valuable for the basis for the PPO's recommendations to be explicitly stated, and for the PPO to explore means of emphasising the procedural nature of their recommendations, to avoid implying that practice that diverged from policy necessarily contributed to a death.

Whilst Coroners need to determine whether failings to follow policy caused or contributed to the death, the PPO do not always examine this. Coroner 5 wanted the PPO and Coroner investigations to be better linked and requested that the PPO consistently consider the consequences of the failings they identified.

CORONER 5 Linking us up as the two different investigations better, that I would like us to be doing. [...] They have a slightly different approach to it. [...] For me, one of the key things I would like to see in

the PPO Report is if it went wrong, what did that mean? Because that is the question the family is going to ask, isn't it: would that have made a difference?

All stakeholders, in particular bereaved families, deserve transparent and accurate representations of the PPO's activities. As there are multiple parallel investigations undertaken by different agencies into prisoner deaths, it is particularly important to be explicit about what is being done and why, for the benefit of all stakeholders. The PPO could therefore valuably revise its *Terms of Reference*, to more accurately reflect its practices to all stakeholders. In so doing, the PPO must consider that focussing on policy compliance as the start and end point of investigations will likely mean that attention to preventative work is peripheral at

Whilst Coroners
need to determine
whether failings to
follow policy caused
or contributed to
the death, the PPO
do not always
examine this.

19. Assessment, Care in Custody and Teamwork (ACCT): the care planning process for prisoners identified as being at risk of suicide or self-harm

20. P5 of <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkmjgw/uploads/2015/03/self-inflicted-deaths-2013-14-Final-for-publication-5.pdf>

best,²¹ or broaden its activities to do what its *Terms of Reference* imply. A broadened set of activities and considerations could see the PPO better effect change and improve prison safety through their investigations. Related limitations and a lack of transparency about the basis for investigations were found with clinical reviews, to which we now turn.

Lack of basis for clinical review findings

There are longstanding concerns about the quality and independence of clinical reviews,²² and little evidence defending their existing parameters and execution, or indicating efforts to improve. Five Coroners were very critical of the clinical reviewers, highlighting their perceived lack of expertise, for example:

CORONER 2 The clinical review, [...] you've got an issue re: expertise, they're not experts.

CORONER 4 The clinical assessors, they are often nurses and they are being asked frequently to look at the decisions that had been made [...] by psychological or psychiatric doctors. [...] They are not always particularly robust.

CORONER 8 You very often get non-specialists giving opinions on specialist matters. [...] If it's a cancer diagnosis issue, get a specialist in. [...] The clinical reviewer ought to be an expert in the area before they make or give expert opinion and make recommendations. [...] I've had on more than one occasion, [...] a GP [...] giving advice on what would be [...] a Consultant Oncologist [...] area of expertise.

Whilst there may be a rationale for clinical reviews being done as they are currently, in our sample this was not made clear to Coroners, who are a core audience for the findings. Expanding, Coroner 3 considered that

the clinical reviewers had insufficient experience of the context of prison medicine:

CORONER 3 Clinical Reviewers [...] tend to be GPs who are doing a bit of session work. [...] I questioned a clinical reviewer and said: well what experience have you got of prison medicine and they said: I've never worked in a prison, [...] I have my knowledge and experience as a GP. Well prison medicine is different. There are different structural factors in play [...] So what value does the PPO have? Well in some of these types of cases, little.

Coroner 4 went on to describe an instance of the clinical reviewer changing their judgment at inquest. It is unlikely that this revision would then also be inserted into published PPO reports and communicated to stakeholders. Changing judgments like this might also affect the trust and confidence of bereaved families in the investigations.²³

CORONER 4 I will often call the GPs myself, [...] actually I'm not as confident as they often are that care was provided in accordance with that which would be provided in the community. [...] One clinical investigator [...] wasn't able to really justify the conclusions that had been reached and in fact through questioning, departed from the view that care provided was [...] in accordance with the community standard and accepted actually there was some significant failings.

Inadequate clinical review findings could also create delays in already lengthy inquest processes, for example if expert work had to be repeated or recommissioned. Whilst Coroner 7 accepted that funding might not be available for the PPO or Clinical Reviewer to seek an expert clinical opinion, they wanted this to be made clear 'early on'.

Inadequate clinical review findings could also create delays in already lengthy inquest processes, for example if expert work had to be repeated or recommissioned.

21. Office of the Correctional Investigator (Canada) (2014) A Three Year Review of Federal Inmate Suicides. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20140910-eng.pdf>

22. Leach, P. (2011) *Report on the IAP's Work Stream Considering Investigations of Deaths in Custody – Compliance with Article 2 ECHR*; Harris, T. (2015) *Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18–24 Year Olds* (the Harris Review). London: TSO.

23. Tomczak P and Cook E (2022) Bereaved family 'involvement' in (prisoner) death investigations: whose 'satisfaction'? *Social and Legal Studies OnlineFirst* <https://doi.org/10.1177/09646639221100480>

CORONER 7 The ability to get specialist outside help, [...] Consultant Psychiatrists, Psychologists, Nursing experts. [...] A lot of the times I have to instruct them myself because the job hasn't been done properly to start off with. [...] I know there's a big issue about getting outside experts. [...] If they say to me, well we would have ideally wanted to instruct an expert Psychiatrist but we are not funded to do that, [...] if they were to highlight that early on, now, that would assist us.

Gaining clarity early was important, as a misguided clinical review could change the nature of the inquest, creating inefficiencies and potentially suspicion for bereaved families. Coroner 8 described an instance where a Jury inquest was unnecessarily called for a death which a specialist later deemed unpreventable.

CORONER 8 I'll get [...] a GP saying: earlier intervention by a Consultant Oncologist would have prevented this, [...] and then when I commission an expert report for £2,500 and they say: well that's nonsense. [...] I've gone to the expense of having a Pre-Inquest Review, getting everyone together, saying: [...] earlier intervention may have had an impact on the cause of death which may have altered the outcome [...] and then when I do seek expert opinion, I'm told: well actually the cancer was at such an advanced stage, no treatment would have had any difference on the outcome.

Reflecting the PPO's consideration of factors that did not cause the death and recommendations that were not directly linked to the death, as explained above, Coroners highlighted the risks of diverging remits between their inquest and the clinical review. Coroners need to determine whether inadequate care caused or contributed to the death, whereas clinical reviewers examine whether deceased prisoners' care was equivalent to care in the community. This could create difficulties for Coroners if troublesome findings emerged close to the inquest hearing.

CORONER 5 The clinical review [...] will often express a view about the quality of clinical care. But then [...] in an Article 2 Inquest, it's

not just about whether the care was adequate, it's also did that care cause or contribute to the death [...] And they don't go that far [...] in the clinical review. We then have to follow that up and that can be very difficult. [...] Because our remit is slightly different, they don't appreciate that we need that additional evidence, so we then have to go off and get that.

Coroner 3 expanded:

CORONER 3 What's the purpose of having duplicated or overlapping inquiries? [...] I'm beginning to question the wisdom of this. The risks are that different inquiries produce inconsistent outcomes.

It would therefore be most useful for the PPO and clinical reviewers to reflect on the purposes of and rationales for their investigations, to clarify exactly what they do and consider how this can converge with and diverge from Coroners' inquests. We now conclude this article by considering next steps.

Where to now?

The findings of this project were always intended to inform a practical pilot where the PPO changed its practices and evaluated the value of the changes. A pilot to test some changes to the way the PPO reports and makes recommendations could mobilise some of the findings from this project, support change and deliver improved outcomes for people and staff in prison, as well as powerfully indicating that the PPO is open to collaboration and keen to learn. Unfortunately, a pilot on this work has not yet come to fruition and the current Ombudsman, Sue McAllister, left office at the end of June 2022. Despite firm backing for the collaboration with academia and the implementation of our findings from the Ombudsman during her term, the prevailing view amongst Ombudsman staff in the fatal incidents function: that the reports were well regarded, had impact and so did not need to change, was not supported by what this project indicated. We hope that the incoming senior PPO team will find energy and motivation to take this work forwards, for the benefit of prisoners, prison staff, families, and societies.²⁴

24. Tomczak P (2021) Reconceptualizing multisectoral prison regulation: Voluntary organisations and bereaved families as regulators *Theoretical Criminology OnlineFirst*. <https://doi.org/10.1177/1362480621989264>

Families Inside: Young people's experiences of serving a sentence at the same time as a family member

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Despite the now substantial body of literature that documents the experiences and effects of imprisonment on families, none explicitly and exclusively focuses on family relationships where both members are serving a sentence simultaneously. Instead, those in prison tend to be seen solely in the role of 'prisoner' rather than there being a recognition of their ability to hold dual identities simultaneously — of 'prisoner' and 'family member of a prisoner'.

Interest in prisoners' families has increased rapidly over the last decade, within academic literature as well as criminal justice policy and practice,¹ and has shown the overwhelmingly negative effects on individuals and their communities, in economic, health, emotional and psychological terms, often resulting in an intensification of existing inequalities.² Family members have always, however, been outside of the prison (the exception being research on mother and baby units). Even the fact family members may have previously been incarcerated or had contact with the criminal justice system is rarely

explicitly acknowledged. Though work around the experiences of previously incarcerated fathers and their sons, and on layered liminality for prison visitors who have served a prison sentence themselves highlight what is being missed in failing to consider these experiences.³

Despite the acute paucity of literature specifically exploring family relationships carried out within and across the prison estate, it should come as no surprise that these relationships exist. Research evidences both the concentration of offending behaviour within families and the intergenerational transmission of offending.⁴ While there are no estimates of the prevalence of simultaneous familial imprisonment within the UK, qualitative work has indicated a figure of between a half and two thirds of (female) prisoners in a prison in Portugal had family members also serving a sentence.⁵ Research in Australia has shown that from survey respondents reporting two or more generations of incarceration more than 80 per cent of Indigenous, and a third of non-Indigenous prisoners reported

1. Condry, R. & Smith, P.S. (2018). *Prisons, Punishment and the Family: Towards a new sociology of punishment?* Oxford University Press; Farmer, M. (2017) *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. Ministry of Justice and HM Prison and Probation Service. Retrieved from <https://www.gov.uk/government/publications/importance-of-strengthening-prisoners-family-ties-to-prevent-reoffending-and-reduce-intergenerational-crime>; HM Prison and Probation Service (2020). *Strengthening Prisoners' Family Ties Policy Framework*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863606/strengthening-family-ties-pf.pdf; Hutton, M. & Moran, D. (2019). *Palgrave Handbook of Prison and the Family*. Palgrave Macmillan; Lanskey, C., Markson, L., Souza, K. & Lösel, F. (2019). Prisoners' Families' Research: Developments, Debates and Directions'. In Hutton, M. & Moran, D. (Eds), *The Palgrave Handbook of Prison and the Family* (pp. 15-40). Palgrave Macmillan; Scottish Prison Service (2017). *Family Strategy 2017-2022*. Retrieved from <http://www.sps.gov.uk/Corporate/Publications/Publication-5042.aspx>.
2. Codd, H. (2008). *In the Shadow of Prison: Families, Imprisonment and Criminal Justice*. Willan Publishing; Condry, R. (2007). *Families Shamed: The Consequences of Crime for Relatives of Serious Offenders*. Willan Publishing; Jardine, C. (2019). *Families, Imprisonment and Legitimacy: The Cost of Custodial Penalties*. Routledge; Wakefield, S. & Wildeman, C. (2013). *Children of the Prison Boom: Mass Incarceration and the Future of American Inequality*. Oxford University Press.
3. Halsey, M. & Deegan, S. (2012). Father and son: Two generations through prison. *Punishment and Society*, 14(3), 338-367; Foster, R. (2017). Exploring 'Betwixt and Between' in a Prison Visitors' Centre and Beyond. In Moran, D. & Schliehe, A. (Eds), *Carceral Spatiality* (pp. 169-198). Palgrave Macmillan.
4. Besemer, S., Ahmad, S., Hinshaw, S. & Farrington, D. (2017). A systematic review and meta-analysis of the intergenerational transmission of criminal behaviour. *Aggression and Violent Behavior*, 37, 161-178; Beaver, K.M. (2012). The familial concentration and transmission of crime. *Criminal Justice and Behavior*, 40(2), 139-155; Farrington, D. P., Jolliffe, D., Loeber, R., Stouthamer-Loeber, M. & Kalb, L.M. (2001). The concentration of offenders in families, and family criminality in the prediction of boys' delinquency. *Journal of Adolescence*, 24(5), 579-596; Murray, J. & Farrington, D. P. (2005). Parental imprisonment: effects on boys' antisocial behaviour and delinquency through the life course. *Journal of Child Psychology and Psychiatry*, 46(12), 1269-1278.
5. Da Cunha, M. (2008). Closed circuits: Kinship, neighborhood and incarceration in urban Portugal. *Ethnography*, 9(3), 325-350.

having a family member currently serving a prison sentence, with an average of 3.8 and 1.8 family members per respondent currently incarcerated, respectively.⁶

This article aims to highlight these ignored family experiences and what they can contribute to our understanding of punishment in these familial contexts. From research into 'pseudo-families'⁷ and friendships within prisons we know these relationships are seen as having an impact on prison order,⁸ being shown as a source of emotional and practical support and protection, as well as conversely increasing the members' obligations to potentially become involved in violence or illegal activities for, or with, their 'family' or friendship group. Simultaneously imprisoned family members have been seen to look after, support and protect their relations, particularly where younger family members or those who are new to the prison are concerned.⁹

So, while we consider the potentially protective and aggravating factors coming from the formation of family-type structures within, or from the importation of pre-existing (non-familial) relationships into, the prison, we rarely consider what it might mean when pre-existing familial relationships exist within a prison, either for the prisoners or the prison.

When thinking about family it is also important that we take as wide a view of this as possible. Increasingly there is a focus on families as something formed through what they 'do'¹⁰ rather than simply what they are; relationships are more than just biological connections

between people. This is true in studies of family generally but also in criminological work specifically.¹¹ The result of this is that family members are not simply those who are biologically related but instead those who play that role within someone's life, for example extended family members, step-parents or step-siblings, or 'sibling-like' relationships from foster or kinship care arrangements.¹²

Drawing on interviews with seven young men within a Scottish Young Offenders Institution (YOI) and ten interviews with prison officers in the Scottish Prison Service (SPS), this article outlines the experiences of serving a prison sentence at the same time as a family member, either in the same or different prisons, how these relationships are maintained and the impact of the prison environment on this. It does so by specifically considering these relationships in terms of care in the

familial context, a behaviour not often associated with prisoners,¹³ and where it has been explored it has not taken account of where this care was between family members.¹⁴ This caring behaviour is one way family can be 'done'¹⁵ or 'displayed'¹⁶ in the restrictive conditions of a prison. When taken in the context of the level, or risk, of violence within prisons,¹⁷ and particularly YOIs,¹⁸ as well as a lack of trust¹⁹ it can be used to show how the prison context changes how young people experience their

This caring behaviour is one way family can be 'done' or 'displayed' in the restrictive conditions of a prison

relationships with simultaneously imprisoned family members. As well as beginning to illuminate the complex nature of these relationships this article also highlights a need for a greater understanding and

6. Halsey, M. (2018). 'Everyone is in damage control'. In Condry, R. and Smith, P.S. (eds) *Prisons, Punishment and the Family: Towards a new sociology of punishment?* (pp. 213-229). Oxford University Press.
7. Owen, B. (1998) *In the mix: Struggle and survival in a women's prison*. State University of New York Press; Kolb, A. & Palys, T. (2018). Playing the Part: Pseudo-Families, Wives and the Politics of Relationships in Women's Prisons in California. *The Prison Journal*, 98(6), 678-699.
8. Crewe, B. (2009). *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford University Press.
9. Halsey, M. & De Vel-Palumbo, M. (2020). *Generations Through Prison: Experiences of intergenerational incarceration*. Routledge; Scott, D. & Codd, H. (2010). *Controversial issues in prison*. Open University Press.
10. Morgan, D.H.J. (1996). *Family Connections: An Introduction to Family Studies*. Polity Press.
11. Jardine, C. (2018). Constructing and Maintaining Family in the Context of Imprisonment. *British Journal of Criminology*, 58(1), 114-131.
12. Scottish Government (2021). *Staying Together and Connected: Getting it Right for Sisters and Brothers National Practice Guidance*. Retrieved from <https://www.gov.scot/publications/staying-together-connected-getting-right-sisters-brothers-national-practice-guidance/documents/>.
13. Crewe, B., Warr, J., Bennett, P. & Smith, A. (2014). The emotional geography of prison life. *Theoretical Criminology*, 18(1), 56-74.
14. Laws, B. & Leiber, E. (2022). 'King, Warrior, Magician, Lover': Understanding expressions of care among male prisoners. *European Journal of Criminology*. 19(4), 469-487.
15. Morgan, D.H.J. (1996). *Family Connections: An Introduction to Family Studies*. Polity Press.
16. Finch, J. (2007). Displaying Families. *Sociology*, 41(1), 65-81.
17. Crewe, B., Warr, J., Bennett, P. & Smith, A. (2014). The emotional geography of prison life. *Theoretical Criminology*, 18(1), 56-74; Edgar, K., O'Donnell, I., & Martin, C. (2003). *Prison Violence: The dynamics of conflict, fear, and power*. Willan Publishing; King, R. D. & McDermott, K. (1995). *The State of Our Prisons*. Clarendon.
18. Ministry of Justice (2016) *Safer in custody statistics England and Wales*. UK Government.
19. Jardine, C. (2019). *Families, Imprisonment and Legitimacy: The Cost of Custodial Penalties*. Routledge.

evidence-base for decision-making around them within prisons.

Methodology

This article draws on two separate Economic and Social Research Council funded research projects.²⁰ One explored young people’s experiences of familial imprisonment, including a sub-sample of seven young men aged 17-21 who were currently in a YOI and had experienced simultaneous familial imprisonment. The other involved ten prison officers and considered their understanding and operationalisation of the Scottish Prison Service Family Strategy.

The young people were recruited through youth workers within the prison and therefore identification of potential participants relied first on the young men’s attendance at the youth work provision, and secondly the knowledge of the young men’s familial imprisonment experiences by the youth workers. Their experiences are not intended to be representative, and are discussed with the intention of beginning an exploration of these experiences and highlighting the need for a further understanding of them, from both an academic and practice standpoint.

The young men’s ages and relationships with simultaneously imprisoned family members are shown in Table 1 below.

Table 1: Summary of participant details

Name ²¹	Age	Simultaneous imprisonment experience
Chris	20	Younger brother. Same YOI, different Halls. ²²
Darren	20	Father. Different prisons.
Grant	20	Step-father. Different prisons. Younger step-brother. Same YOI, different Halls.
Jay	21	Grandfather. Different prisons.
John	20	Older brother. Same YOI, different Halls.
Ryan	17	Father. Different prisons. Older step-brother. Same YOI, different Halls.
Scott	17	Older brother. Different prisons.

The prison officers were recruited from five prisons across Scotland which hold men, women, and young people, including those on remand, serving short and long sentences and who were located in the open estate.²³ The prison officers held roles including that of a Family Contact Officer, roles within Integrated Case Management, within Offender Outcomes or in Operations.

Ethical approval was obtained for both projects from the Universities involved (the University of Glasgow and the University of Strathclyde respectively) and the SPS. Interviews with the young people were semi-structured and ranged in length from 20-70 minutes, averaging around 40 minutes, and took place within the education area of the prison. Interviews with the prison officers were also semi-structured and took

place using MS Teams or by telephone and lasted around an hour.

All the interviews were audio recorded and transcribed verbatim. The interviews with the young men were coded and analysed drawing on a grounded theory²⁴ approach while the interviews with the prison officers were analysed using thematic framework analysis.²⁵

Findings

Analysis of the interview data revealed the experience of simultaneous familial imprisonment to be contradictory in nature, both ‘stressful’ and ‘homely’. It also illustrated how the form of care taking place within these relationships is changed by the environment in

20. Grant numbers - ES/M003922/1 and ES/v010107/1

21. All participants have been given pseudonyms.

22. Hall is a term commonly used in Scotland for separate residential areas of the prison. These areas may be known as Wings or Units in England and Wales.

23. A long sentence in Scotland is more than four years.

24. Glaser, B. G. & Strauss, A. L. (1968). *The Discovery of Grounded Theory; Strategies for Qualitative Research*. Weidenfeld and Nicolson.

25. Spencer, L., Ritchie, J., Lewis, J. & Dillon, L. (2003). *Quality in Qualitative Evaluation: A framework for assessing research evidence*. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498321/Quality-in-qualitative-evaulation_tcm6-38739.pdf.

which they occur, and showed the consequences of how this form of caring behaviour could be perceived by staff and the wider prison. Further, the experiences of participants suggested that simultaneous familial imprisonment compounds the experience of control and punishment felt by those within these relationships and raises questions around the role of power and the impact of discretionary decision-making on this.

'Stressful' and 'Homely'

'It's a bit, like, the first time he came in obviously my stomach dropped, but you just, every time he comes out, just drops basically.' (John)

'It made, it made me feel mair homely, see when I seen him I was like that, know what I mean...' (Chris)

'I'm glad that he's out noo, know what I mean, cause it's, it's something that I dinnae have to worry about while I'm in here now, know what I mean [...] I missed him when he was oot but when he was in here I didnae want him in here, you know what I mean, so it felt weird.' (Chris)

There was a tension in having a family member serving a sentence within the same prison, where it could be 'stressful', introducing worry and concern, or seen as providing a level of comfort or 'homeliness'.

Where we think about 'care' within a family as something that is one way family can be 'done'²⁶ or 'displayed'²⁷ in the restrictive conditions of a prison this highlights how this relationship can be different within the prison than outside.

'When we were outside it was more, he got kicked out [of the family home] 'cause he was, like, attacking me basically. So we

weren't very close, but as soon as I got the jail we got very close. [...] I'm a lot more protective of him now' (John)

Fear or expectation of violence within prison can be commonplace and when taken along with a lack of trust can see family members becoming one of the few people individuals can trust within that space. While forming relationships within the prison has been shown to be one way in which prisoners attempt to cope with the environment — for example, the formation of pseudo-families or friendship groups — where the

person in prison is serving their sentence along with a family member in the same prison, they do not require a 'pseudo' family, nor to form new relationships, in order to fulfil these needs. These existing family relationships are also built on a level of trust which exists beyond that which may be possible within these pseudo-families²⁸ and involves levels of reciprocal behaviour beyond that of typical prison friendship groups.²⁹

While these existing familial relationships can provide a form of both material and emotional support, potentially easing the experience of prison in some ways, there conversely comes with it a deeper or heightened sense of obligation to support or assist those in your group. This

can bring with it a level of risk or potentially greater punishment.

'Because if he [his brother] ends up fighting wae somebody, know what I mean, I, I said to him, 'I mean I'll have to back you up and that', and he's like, 'No, no because you're in the open side and that tae'. But it's still ma brother, you know what I mean.' (Chris)

'Because, I'm on the open side, so I'm a trusted prisoner, privileged and all that, and basically if somebody, somebody said something wrang to him I'd, I'd easily ruin

26. Morgan, D. H. J. (1996). *Family Connections: An Introduction to Family Studies*. Polity Press.

27. Finch, J. (2007). Displaying Families. *Sociology*, 41(1), 65-81.

28. Owen, B. (1998). *In the mix: Struggle and survival in a women's prison*. State University of New York Press; Kolb, A. & Palys, T. (2018). Playing the Part: Pseudo-Families, Wives and the Politics of Relationships in Women's Prisons in California. *The Prison Journal*, 98(6), 678-699.

29. Crewe, B. (2009). *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford University Press.

that just to get back at them. So, it was a bit stupid, but I'd back him up. So, it's a bit stressful.' (John)

This 'looking after' or 'standing up' for family members is not exclusive to the prison and is seen in many sibling relationships.³⁰ Where there are 'enhanced feelings of togetherness'³¹ (for example, through the lack of trust in a prison environment) this can change the more dominant explanations (e.g. older sibling protecting younger, or male protecting female) for the form this behaviour takes. Where the caring takes place in a prison, it can take on a different form, where the need to 'protect' your family member is heightened, and also come with infinitely higher stakes. As well as the associated physical risk there is also the risk that any involvement may lead to a period spent within segregation,³² reduced privileges,³³ or an extended sentence.³⁴

This form of caring was also felt to be constructed in a certain way by the prison and its staff.

'And they try and make you not see him as much as they can, just because they know that you'll back each other up, more fights, all that.' (John)

The young men's perception was their brotherly relationships were viewed in terms of a risk to the ability to maintain order within the prison. Their enactment and display of caring through 'backing up' their brother meant this caring was seen in terms of potential violence and a need to control this, rather than the potential protective factors these relationships could provide. There is already a recognition of the tension between a security and family rights perspective within prisons.³⁵ Families can be seen by staff as a resource but also a risk — in terms

of potentially conveying illicit items into the prison through visits, or where they may not represent the pro-social bonds required for desistance — and this can be compounded where multiple family members are within the penal estate.

Compounded Control, Discretion and Power

'...you get a phone call, well you can put in for one every two week but sometimes when you put in for one you don't get it [...] they can say, you've had it too much and that, know what I mean...' (Darren)

Where the caring takes place in a prison, it can take on a different form, where the need to 'protect' your family member is heightened, and also come with infinitely higher stakes.

'I tried to get them [inter-prison calls] the noo but, his [step-father's] wee boy's in doon the stair fae me, so he's got them wae him so I don't know if they're gonna accept two fae [the same prison], you know what I mean...' (Grant)

'...my last one was when I first come in, three months ago. So then it's, like, it's, it's time wise, say it's, 'cause if, if I phoned him [his brother] today and then wanted another phone call with him in, like, two days' time they'd be wondering why, know what I mean.' (Scott)

Along with this lack of clarity around entitlements regarding inter-prison calls, there was a similar lack of clarity for the young men in relation to the provision of inter-prison visits. Only Darren had received these visits, with his understanding they could take place every six months as long as he, and the person who was visiting, had been sentenced to longer than six months and had

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30. Edwards, R., Hadfield, L., Lucey, H. & Mauthner, M. (2006). *Sibling Identity and Relationships: Sisters and brothers*. Routledge.
31. Edwards, R., Hadfield, L., Lucey, H. & Mauthner, M. (2006). *Sibling Identity and Relationships: Sisters and brothers*. Routledge.
32. Segregation is where prisoners are kept apart from other prisoners, often in another part of the prison known as the segregation unit. While in segregation opportunities to work, attend education or have time out of your cell may be limited compared to when in the mainstream population.
33. A loss of privileges can include removing a TV from the person's cell, removing them from their position as a "pass man" (a job where the prisoner is responsible for cleaning areas of the prison and is paid for this), or in England and Wales a reduction in visits from family and friends through the Incentives and Earned Privileges Scheme.
34. Depending on the severity of the behaviour, for example if a crime of assault is committed, time may be added on the sentence currently being served.
35. Jardine, C. (2019). *Families, Imprisonment and Legitimacy: The Cost of Custodial Penalties*. Routledge; Smith, P. S. (2018). Prisoners' Families, Public Opinion, and the State. In Condry, R. & Smith, P. S. (Eds), *Prisons, Punishment and the Family: Towards a new sociology of punishment?* (pp. 121-135). Oxford University Press.

more than six months left of their sentence. When speaking to the other young men with a family member in a separate prison, Ryan believed such visits were available monthly, Scott knew they were a possibility but didn't mention frequency, and Grant did not know about them at all.

The Prisons and Young Offenders Institutions (SCOTLAND) Rules 2011, Section 63(8) states a prisoner is entitled to receive a visit from a person who is a prisoner detained at another prison only in exceptional circumstances and that the Governors of the two prisons must give consent. There is no mention within the Rules of inter-prison telephone calls. There is no mention of these types of inter-prison calls or visits within The Prison Rules 1999 for England and Wales.

Prison life is full of rules, yet here there is a lack of clarity and understanding on what is permitted in terms of contact with a family member in another prison. The lack of specific rules in place to govern this contact can lead to discretionary decision-making by prison officers. The ontological insecurity which arises from this discretionary behaviour means an unpredictability of response for prisoners and illustrates a component of soft power which can be experienced by simultaneously imprisoned family members.³⁶

Even where family members are within the same prison, contact can still be reliant on the discretion of prison staff where they are within different Halls.

'So, aye, there's times where obviously he was in here, we had double visits and that, so me and him have sat thegither and ma mum's came in and spoke to both of us [...] Aye, but I think they made an exception for us at one point to let us both go up at the same time.' (Chris)

'[...] where we've got a girl in [Female] Hall and the brother's in [Male Hall] or the boyfriend, as long as it's a long-term relationship again, [...] we would just run a

visit session [...] we would give them one a week. Because it wasn't pressing our numbers in any way 'cause we're such a small jail. You know, it wasn't having any impact. So they could speak to their boyfriend once a week and there was money in the Common Good Fund that we could, we've got a wee tea bar, a wee kind of café [...] So they could sit for an hour with their relative and have a cup of tea and a blether.' (PO4)

'The occasion I'm thinking of is I had the son and his dad was downstairs on the bottom flat [...] So they would just get contact whenever we were able to do it.' (PO10)

Prison life is full of rules, yet here there is a lack of clarity and understanding on what is permitted in terms of contact with a family member in another prison.

In terms of cell sharing, all cells within the YOI were single occupancy. However, while both Chris and John were within different Halls to their brothers both intimated they would have liked to have shared a cell with them had this been possible. Single cell occupation is stated as the preferable option,³⁷ but this may not necessarily be the best option for everyone, at all times, and this may be particularly true for simultaneously imprisoned family members. This is obviously not to presume that all family members will have good

relationships, or will want to share a cell, but their needs are generally not accounted for and decision-making tends to be dominated by a focus on risk of violence or remand status.³⁸

When the young men spoke about being the subject of these discretionary decisions by staff, they often felt they were dependent on their behaviour and how they were viewed by staff in relation to this.

'So I see him [his brother] aw the time and I speak to him and that tae. So they're alright wae that, the staff, know what I mean, the staff know I'm awright, I'm quiet, I just get on wae ma sentence, so it's awright...' (Chris)

This was in contrast to John:

36. Crewe, B. (2009). *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford University Press.

37. United Nations (1955) *Standard Minimum Rules for the Treatment of Prisoners*. Retrieved from https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

38. Muirhead, A., Butler, M. & Davidson, G. (2021). Behind Closed Doors: An exploration of cell-sharing and its relationship with wellbeing. Advance online publication. <https://doi.org/10.1177/1477370821996905>.

'So, again, they, they would take him down to my hall and I'd speak to him, sitting in this wee office room, and then, I think that was, like, the only time that I got, like, to sit down and have a chat with him but, other than that it was just me and him and my parents and that. [...] And they try and make you not see him as much as they can, just because they know that you'll back each other up, more fights, all that.'

This link between contact and behaviour also appeared to be important when family members were located in different prisons. When Ryan was asked whether he planned to arrange an inter-prison visit with his father, he immediately considered the significance of his prior behaviour to the likely outcome of an application.

Ryan: I think so, because I've got hundreds of reports for fighting and stuff like that now.

Kirsty: Ah right, so that's gonna, like, count against-

Ryan: Aye.

While the uncertainty and insecurity arising from this discretion and flexibility of officers could be seen on the one hand as negative and an exercise of soft power, compounding the experiences of punishment felt by these young people, there was also an example provided by a prison officer where the formalisation of the process around this contact resulted in a reduction in the levels family members would have experienced previously.

'Again, that's something that's new that's come in because before, a few years ago, we just ran them. Not so much the visits but certainly the 'phone calls. We made sure that if somebody's brother was in [Prison] or their girlfriend was in [Prison] we would give them a 'phone call once a month. You know, an inter-prison one [...] But the SPS decided to formalise that and make it into a process and cut it right back for whatever reason [...] And it has to be the Deputy Governor or Governor

that sign it off. Whereas beforehand an officer could go in to the Hall Manager and say, so and so's husband's lying in [Prison], can we maybe get them inter-prison 'phone calls. And he would just have a look at it, check they were linked on the computer and it was legit and it wasn't just somebody's, you know, boyfriend of a week and formalise it, yeah, once a month. And we would just stick dates in the diary, 'phone [Prison] and do all that. But they've cut that back.' (PO4)

This highlights the tension within the system of balancing the use of discretion by officers and the uncertainty where there is no formal process or regulation in place at all.

As well as being subject to discretionary decision-making in relation to inter-prison calls or visits, the young men illustrated other aspects of compounded control over their familial relationships. For example, one of the young men did not want an inter-prison visit because his brother would have to travel in handcuffs. Another spoke of his experience of an inter-prison visit where the already surveilled visit room became hyper-surveilled as they were the only visitors in it.

'But, like, you'd be in handcuffs, it's, all the way to the visit, and then when you got there you'd get took out and soon as you left the visit you get put back in handcuffs.' (Scott)

'You're sitting in the visit room just two people, know what I mean. If, even if you're sitting at the other side they can still hear every single word you're saying there's, like, see when there's hundreds of people in the visit room everybody's talking so you've got that kinda bit of privacy. It's privacy without barriers being put up, if you get us.' (Darren)

This seems to represent further possible stigma and degradation for these families and individuals on top of the already existing 'legally sanctioned stigma' experienced by visitors, including family members, when compared to other official visitors.³⁹ The inferior treatment, suspicion and stigmatisation are

This link between contact and behaviour also appeared to be important when family members were located in different prisons.

39. Hutton, M. (2018). The Legally Sanctioned Stigmatization of Prisoners Families. In Condry, R. & Smith, P. S. (Eds), *Prisons, Punishment and the Family: Towards a new sociology of punishment?* (pp. 230-243). Oxford University Press.

compounded where both family members are within the prison system.

Discussion

Simultaneous imprisonment of family members is largely overlooked in research, be that within familial imprisonment literature, sociology of punishment or sociology of the family. They are also largely absent from criminal justice policy and practice, save for a recognition of the concentration and transmission of offending within families in numerical and risk-based terms. There is therefore a lack of understanding of how this is experienced by, and the impact of this on, those serving a prison sentence, as well as a lack of evidence-base to inform decision-making where these situations do occur.

The use and reach of penal power into the lives of family members of prisoners has been explored for those outside of prison, but the experiences here illuminate the use of power and control in respect of family relationships carried out where both members are within the prison estate. The compounded control experienced in terms of the relationships and attempts at maintaining contact with imprisoned family members, along with the ambiguity and uncertainty around what is allowed in relation to this, functioned as a form of 'soft power'. The impact of familial imprisonment is often greater on those who are already marginalised,⁴⁰ and this can be compounded where multiple family members find themselves serving sentences at the same time. With no minimum requirements in place around the number of inter-prison visits or calls they are allowed, and no ability to arrange these without going through prison staff, they are subject to a greater level of control by the prison and of discretionary decision-making by prison staff, with limited opportunities for autonomy or agency in their familial relationships. As a result, they may feel a greater weight of penal power bearing down on them.

The experiences of prisoners' partners have been conceptualised in relation to how the system changes

the forms of love, intimacy and romance that are possible, and the adaptations necessary to achieve these qualities in relationships.⁴¹ Through the exploration of simultaneous familial imprisonment we can begin to understand the changing forms of familial care and display in the context of the prison, what forms these may take in an environment characterised by restriction, control, suspicion, uncertainty and fear, and consider any potential harms stemming from this. The nature of prison as a place of violence, or the threat of violence, may change these family relationships. It seems to change what it means to care, how this care can be, and is, enacted, and why it is needed. The need

to look out, or stand up, for family members is heightened and takes on different meanings. The potential repercussions of this ostensibly caring behaviour can be high, as it is perceived to be viewed and constructed by the prison system in terms of risk, seen as potentially resulting in violence, and having sanctions of lost privileges or extended sentences. The worry and concern these young people display in respect of their imprisoned family members comes from the heightened awareness of the actuality of serving a prison sentence, and additionally can come from a unique awareness from their location within the same establishment. This, on top of the fears and concerns they may have around their own imprisonment, may compound the harm already evidenced to occur within a penal

environment, particularly in relation to children and young people in custody.

While we consider these aspects in terms of pseudo-families, we are not fully accounting for existing familial relationships in prison. Arguably there are even greater expectations and levels of obligation on these family members, yet the impact of this on the individuals or the prison has not been fully explored.

While the sample upon which this article is based is small it does highlight the experiences of an overlooked group. These relationships, and the experiences of those within them, are woefully under-researched and this needs to be remedied if we are to

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same time.

40. Jardine, C. (2018). Constructing and Maintaining Family in the Context of Imprisonment. *British Journal of Criminology*, 58(1), 114-131.

41. Comfort, M. (2008). *Doing Time Together: Love and Family in the Shadow of the Prison*. University of Chicago Press.

fully understand the experiences of those serving a prison sentence at the same time as a family member. Given that we know the prison population tends to be drawn from the most deprived areas,⁴² and consists of those with higher levels of trauma, abuse and mental health issues,⁴³ this suggests that those within these simultaneously imprisoned family relationships may be some of the most marginalised within society.

While it has been argued there is a need for a new theoretical understanding of people's experiences of both primary and secondary prisonisation,⁴⁴ here I suggest this is also needed for people experiencing their own imprisonment and familial imprisonment simultaneously. These experiences have usually been theorised about separately and treated as distinct, but this may risk us failing to understand the unique experiences of this particular group. In turn, this may impede our understanding and mitigation of potential harms these individuals may experience in custody, and prevent us from developing our decision-making abilities for those in the care of the prison system.

The right to family life is recognised in the UK as a legal and human right under Article 8 of the European Convention on Human Rights, and is met through the provision of visits and other forms of communication with family members outside of the prison. The experiences of simultaneously imprisoned family members must be recognised to ensure these rights are met and they are not discriminated against simply due to the fact both are in custody. More work must be done to understand the implications of simultaneous familial imprisonment, both for those serving sentences at the same time as family members and the prisons who hold them.

Covid-19

The research with the young men took place prior to Covid-19, and while the research with the prison officers took place in 2021 (while some pandemic

restrictions were still in place), they were asked to reflect on SPS practices prior to this, with the assumption that pre-pandemic ways of working would return in due course. Therefore, the data presented in this paper do not reflect the participants' experiences during Covid-19. For example, prisoners from different Halls were placed in 'bubbles' and were unable to mix, therefore two siblings in different Halls would have been unable to have visits together or visit each other during this time. Similarly, inter-prison visits would have been unlikely under pandemic restrictions. At the time of writing, it is unknown whether these restrictions have now been completely removed or continue.

Policy and Practice Implications

The SPS Family Strategy contains both explicit and implicit assumptions that family members are always outside in the community.⁴⁵ While similar strategies in individual prisons in England and Wales have not been examined, the document which states that all prisons must have a Family and Significant Other Strategy similarly contains explicit and implicit assumptions that family members will not be in custody themselves.⁴⁶ There needs to be a recognition that family members can be serving sentences simultaneously, that everyone has the right to a family life, and that 'family' can mean more than just partners, (biological) parents and children. This can be particularly important for those who have experience of the care system. There should not be an inequity in provision because of the location of a prisoner's family member. There also needs to be a greater understanding of how the prison environment may change the form caring takes within these relationships. Where families are seen simply as a resource to reduce reoffending, particularly in the context of a prison system based on risk and control, this can hinder the understanding and response to this caring behaviour and the ability to work with families using a rights-based approach.

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42. Scottish Government (2020) *Scottish Prison Population Statistics 2019-20*. Retrieved from <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/>.
43. Williams, W. H., Cordan, G., Mewse, A. J., Tonks, J. & Burgess, C. N. W. (2010). Self-reported traumatic brain injury in male young offenders: A risk factor for re-offending, poor mental health and violence? *Neuropsychological Rehabilitation*, 20(6), 801-812; Nolan, D., Dyer, F. & Vaswani, N. (2017). 'Just a wee boy not cut out for prison': Policy and reality in children and young people's journeys through justice in Scotland. *Criminology & Criminal Justice*, 18(5), 533-547; Bowler, N., Phillips, C. & Rees, P. (2018). The association between imported factors and prisoners' mental health: Implications for adaptation and intervention. *International Journal of Law and Psychiatry*, 57, 61- 66.
44. Halsey, M. & Deegan, S. (2012). Father and son: Two generations through prison. *Punishment and Society*, 14(3), 338-367.
45. Scottish Prison Service (2017). *Family Strategy 2017-2022*. Retrieved from <http://www.sps.gov.uk/Corporate/Publications/Publication-5042.aspx>.
46. HM Prison and Probation Service (2020). *Strengthening Prisoners' Family Ties Policy Framework*. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863606/strengthening-family-ties-pf.pdf.

'Out of Sight Out of Mind': Arguing the Case for Social Workers in Women's Prisons.

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Introduction

In his recent review, 'The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime',¹ Lord Farmer responded to previous evidence-based recommendations for Social Workers to be present in every women's prison. In 2019, and in partnership with Prison Advice and Care Trust (Pact),² a three-year pilot project (funded by the Sylvia Adams Foundation³) began which saw two Social Workers being placed in two prisons for women in the UK. This article will outline some of the evidence that fed into the Farmer Review, which then informed the recommendation and justification for a Social Worker presence in the prisons. The article also reflects on the first year of the Social Worker pilot, highlighting impact and outcomes of the project and makes the case for the project to be formally adopted and extended.

Lord Farmer's first review in 2017 concluded that 'family was potentially (or should be), the 'golden thread' running through reforms across the prison estate'.⁴ The report recognised that strengthening ties between people in prison, their family, loved ones and significant others can help to prevent reoffending and reduce intergenerational crime. It is important to note that whilst Farmer used the term 'family relationships' he clearly stated in his 2017 report that broader

definitions of 'family' and other 'significant and supportive relationships are inferred'. The report made a number of recommendations which included targets and funds for prison governors, to trial and develop innovations specifically around families and relationships, and importantly, against which prisons would be audited and held accountable. Farmer argued that 'family work' needed to be at the centre of operational policy and work with prisoners, and that planning for release must incorporate work and action around positive relationships. Farmer recommended that more must be done to ensure that contact with families and loved ones was established and maintained, and significantly, that operational disruption to those relationships be reduced and minimised. He recommended that any 'new build' prisons must consider 'family ties' in the suitability of their location, design, technology and facilities for families. Lord Farmer's first report was solely focussed on the prison estate for men. He then undertook a similar review which looked specifically at the plight of criminalised women and their families.

Unlike in Scotland, where there is a Criminal Justice Social Work branch of 'social work' in the criminal justice system, in England a range of 'social work' tasks are often given to Probation Officers and other criminal justice staff. However, in recent times, and particularly post Transforming Rehabilitation (TR),⁵ the Probation Service has been pushed into becoming

1. Ministry of Justice. (2019) The importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809467/farmer-review-women.PDF.
2. The Prison Advice and Care Trust (Pact) is a national charity that provides support to prisoners, people with convictions, and their families. <https://www.prisonadvice.org.uk/>
3. Maintaining the link between women in prison and their children. The Trust is funding Prison Advice and Care Trust to trial the implementation of a key finding in the 2019 Farmer report <https://sylvia-adams.org.uk/prison-advice-and-care-trust/>
4. Ministry of Justice. (2019) The importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809467/farmer-review-women.PDF.
5. Transforming Rehabilitation (TR) was the name given to a White paper issued by the UK Ministry of Justice in May 2013, and to a programme of work from 2013 to 2016 to enact the strategy outlined in the paper. TR was concerned with the supervision and rehabilitation of offenders in England and Wales and was initiated by Chris Grayling, the then Secretary of State. It involved the splitting and partial privatisation of probation services. The new legislation meant that all prisoners serving a sentence of 'more than one day' would now be subject to post prison licence – whereas previously only those serving 12 months, or more were.

more punitive and enforcement focussed, and as a result much of the 'welfare' aspect of probation work had been lost or given less priority.⁶ The new Nationalised Probation Service is revisiting the remit of probation supervision, including that of women in recognition of the importance of family and maternal needs. Nonetheless, in recent years the presence of prison-based Probation Officers and/or Social Workers has been inconsistent. As a consequence, family related, and welfare matters have been neglected. Public sector prisons have Family Engagement Services (FES), also called Family and Significant Others Services (FSOS) — provided under contract by specialist charities, such as Pact. Prisons run by the private sector have 'Family teams' who undertake similar work. FES/FSOS work is defined as 'specialised casework based in prison which aims to build and maintain contact between prisoners and their family members'.⁷ Power asserts that more than this FES/FSOS 'offer emotional and practical support',⁸ which is intended to minimise and/or reduce trauma, improve the quality of relationships, and improve outcomes for imprisoned people and their families, especially children affected by imprisonment. However, prior to 2008 the importance of family ties, although understood widely by practitioners, was not matched in policy. Indeed, Andy Keen Downs CEO of Pact stated in 2016,⁹

"Whilst everyone was talking about how we needed to strengthen family ties and support people in having healthy relationships, there were next to no casework practitioners in prisons working on these agendas".

In attempts to bridge this gap in policy and practice the MoJ introduced a 'children and families' pathway into its 'seven pathways for reducing reoffending'.¹⁰ Following a successful family focussed jointly run pilot at HMP Low Newton and the successful evaluation of Pact's Integrated Family Support (IFS)

programme in 2012,¹¹ the development of family engagement work in prisons was pursued nationally, and most prisons then had some sort of FES/FSOS. FES/FSOS's are most often provided by charities and/or voluntary services and are not always permanently funded. This can leave FES/FSOS, and importantly FES/FSOS staff, vulnerable to abrupt terminations resulting in loss of services for prisoners and their families. There are of course alternative models of provision (for example statutory provision as happens in Scotland), However, it has recently been revealed that the current social work pilot is being adopted and expanded to other prisons. Part of the current problem has been that there is no minimum standard in policy for the level of the service upon which commissioners, and indeed prisons themselves, can base contracts or justify the role. Services can however be permanently funded on a commissioned basis and in the absence of statutory permanent funding, we would argue for this to continue and be a widespread approach.

As highlighted by Power,¹² the role and remit of Family Services has expanded beyond one-to-one support and now extends to running visits, family engagement days, helplines and community services, as well as delivering group work programmes. Thus, the many demands on the time of the individual family engagement workers (FEWS) means that they often have less time for the important one-to-one work that is so important to people in prison, arguably especially to mothers subject to childcare proceedings. Furthermore, the funding allocated for family engagement work often only supports one member of staff to support an entire prison, and although the FEWS are dedicated and hardworking, this is often inadequate. There is therefore a need for some means of quantifying the work as well as specifying it.

Family work in women's prisons can be very different to family work in men's prisons, not least

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6. Walker, S., Annison, J., & Beckett, S. (2019) Transforming Rehabilitation: The impact of austerity and privatisation on day-to-day cultures and working practices in 'probation'. *Probation Journal*, 66(1), pp.113-130.
7. Dominey, J., Dodds, C. & Wright, S., (2016) Bridging the Gap: a review of the Pact family engagement service. *Cambridge: Institute of Criminology*. Pp7.
8. Power, E. (2021) 'Without it you're lost': examining the role and challenges of family engagement services in prisons. *Critical Reflections on Women, Family, Crime and Justice*, p.107-129.
9. See above also (on page 110)
10. Ministry of Justice (MoJ) (2008) Strategic plan for reducing reoffending 2008-2011: Working in partnership to reduce reoffending and make communities safer. A consultation National Offender management Service (NOMS).
11. New Economic Foundation Economic Study (2012) Pact Website <https://www.prisonadvice.org.uk/the-pact-story>
12. Power, E. (2021) 'Without it you're lost': examining the role and challenges of family engagement services in prisons. *Critical Reflections on Women, Family, Crime and Justice*, p.107-129.

because the majority of women in prison are mothers. Whilst it is true that many male prisoners are fathers, Baldwin argues that the ideas and ideals surrounding motherhood, maternal identity and role, alongside maternal emotions, adds an additional layer of complexity when working with women.¹³ Significantly, women in prison are very likely to have experienced childhood and/or domestic adult abuse, be experiencing mental health issues, be separated from children for the first time, be at least 60 miles away from home, and almost half will have previously attempted suicide,¹⁴ and for many women their 'offending' will include a relational element. In short many women are criminalised in the context of poverty, trauma and multiple challenges. Many are also involved in childcare proceedings and challenges. This set of circumstances means that delivering FES/FSOS with women in prison holds additional importance alongside practical, emotional, and relational challenges.

Following his review of women convicted of crime, Farmer recommended the presence of Social Workers in all women's prisons. He recognised this would go some way towards responding to the often unmet needs of women in prison, especially those who were mothers. Farmer described how Baldwin's research evidence, provided via both written and oral submissions to his review, 'made a significant contribution' to his findings and was 'particularly salient' in this development and recommendation. It is important to note that others had also echoed the need for a social work presence in prison in their submissions to the Farmer review (Raikes)¹⁵ and elsewhere (O'Malley and Devaney 2016).¹⁶

Baldwin's research demonstrated evidence of the need and justification for prison based social work, as well as the need for and importance of improved

relationships with 'outside' Social Workers.¹⁷ Mothers in Baldwin's research described how they felt 'out of sight out of mind' (Carla), in relation to social work input and childcare proceedings:

'...as far as they [social services] are concerned I'm in prison, so I'm out of sight out of mind, they don't involve me in any discussions or decisions about my kids, it's like I'm invisible now, I don't count'. (Carla)

Similarly, both Beth and Nicola felt that as 'prison mothers' they 'mattered less' (Nicola), also feeling that it was 'easy' for outside Social Workers to 'forget' (Beth), about them during their incarceration, and to focus and prioritise cases considered more pressing in the community. There is no doubt that limited resources and financial restrictions mean that all Local Authorities, individual Social Workers and social work managers, have to make difficult decisions concerning allocation of time and support, but imprisoned mothers felt that at times they were given no consideration at all. Nicola who had one son in foster care and another adopted whilst she was in prison, described how she felt excluded from the proceedings surrounding her children.

'I would find out after the event that meetings had taken place about my kids, decisions made without me even being involved ... how can that be right, I might have been in prison, but they were still MY kids' (Nicola).

Beth, who served a short sentence for theft, leaving behind a three month-old baby described how decisions made by Social Workers impacted on her relationship with her daughter post-release.

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childhood and/or
domestic adult
abuse, be
experiencing mental
health issues, be
separated from
children for the
first time.

13. Baldwin, L. (2015) *Working with Mothers in Criminal and Social Justice Settings*. Hampshire, Waterside Press.

14. Bromley Briefings (2021), Prison Reform trust (PRT).

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%202021%20Factfile%20final.pdf>

15. Dr Ben Raikes and Dr Lucy Baldwin both spoke of the need for improved relationships with Social Workers 'outside' in their verbal evidence to the Farmer Review and Baldwin expressed the need for prison-based SW in both her verbal and written evidence.

16. O'Malley, S., & Devaney, C. (2016) Supporting incarcerated mothers in Ireland with their familial relationships; a case for the revival of the social work role. *Probation Journal*, 63(3), pp.293-309.

17. Baldwin, L. (2021) Executive Summary, Motherhood Challenged: Exploring the persisting impact of maternal imprisonment on maternal identity and role - summary of original research Baldwin, L. (2021) Motherhood Challenged: A matricentric feminist study exploring the persisting impact of maternal imprisonment on maternal identity and role. Doctoral thesis. <https://dora.dmu.ac.uk/handle/2086/21372>

'they wouldn't bring her to the prison, I begged and begged but they said prison was no place for a baby... but that meant she didn't know me when I got out' (Beth).

Beth went on to describe how the fact her daughter 'didn't know' her made her feel 'worthless' as a mother and she herself predicted she would return to substance misuse 'or worse' because she struggled to cope with what she perceived as her lost positive maternal identity and her lost relationship with her daughter. Beth did indeed later take her own life just over a year later, leaving her daughter motherless.

Sikand in her research around prisons' mother and baby units (MBUs), found that Social Workers often made decisions about the suitability of an MBU space without ever having been to an MBU or seen its facilities.¹⁸ Similarly, many Social Workers have not visited prisons at all and have not seen how accommodating some visiting spaces can be for mothers and children (there is always room for improvement, however). More importantly there is a failure to appreciate the significance and value of maintained contact both for imprisoned mothers and their children. Consequently, funding or supporting prison visits for incarcerated mothers of 'looked after' children is not always given the priority or attention it should have.

Bridging the 'gaps' and improving communication between inside and outside is important and will play a significant role in maintaining contact and/or reducing permanent separations. The Social Work project is therefore a welcome and much needed addition to in-prison family engagement services.

The Project

Following the Farmer review, a roundtable discussion with a number of multi-agency professionals, including (amongst others) the lead author of this paper, the Chief Social Worker Isabelle Trowler, Pact representatives and Lord Farmer, took place in December 2019. It was decided that although ideally supportive social work should be undertaken with all mothers in prison, if funding was to be limited to one Social Worker in each establishment, then the focus for

this project would be working with mothers whose circumstances were most complex, and with those whose children were likely to be subject to childcare proceedings. Thus, whilst the Social Workers were accepted and integrated into the prison's system and diverse service provision, their remit would be essentially protected.

In the light of this a job description and person specification was designed in consultation with roundtable stakeholders. Two women Social Workers with several years post-qualifying experience and a background in child and family social work, were appointed in April 2021 (Becky and Katia). The Social Workers are line managed by Pact but also have both formal and informal support in their roles by mentors, clinical supervisors and prison colleagues.

Currently the two prison-based Social Workers in the pilot project work alongside FEWs but take the lead on the more complex cases, for example where there is substantial involvement with the Local Authority and/or where mothers are involved in childcare proceedings. Thus they (Katia and Becky) are providing a service either not previously provided or provided by unqualified (though often very able and experienced) FEW's who are not always familiar with the legal aspects of proceedings or the rights of the mothers, or who because of their unqualified status often feel unable to challenge or question

Social Workers and their decisions.

The first year of the project has already provided a strong evidence base for the need for Social Workers in women's prisons. Prison staff have accepted and embraced the pilot and the physical presence of the Social Workers, and regularly and appropriately refer women to this additional service. Prison Officers have described feeling 'relieved' to have someone 'take on' this work, which they had previously 'muddled through' but had often felt overwhelmed by and unqualified to undertake.

Both of the project Social Workers feel that they have been effective in building a 'bridge' between the inside and outside of prison by assisting in maintaining contact, encouraging outside Social Workers to involve mothers directly in any childcare proceedings, and also in preparation for release. Molly and Ness describe how having 'in prison' social work support has enabled

More importantly
there is a failure to
appreciate the
significance and
value of maintained
contact both for
imprisoned mothers
and their children.

18. Sikand, M. (2015) *Lost Spaces: Is the Current Provision for Women Prisoners to Gain A Place in A Prison Mother and Baby Unit Fair and Accessible?* the Griffins Society, University of Cambridge institute of Criminology.

them to be more involved in the proceedings involving their children.¹⁹ They describe the positive impact this has had on their wellbeing and their maternal identity and role:

'I have come further [with social services] than ever since I have had Katia as a worker. I have had more contact with social services and I'm getting photos and updates of my son now which I haven't for two years! It has given me peace of mind [...] I got my risk lowered to do with my son and I have updates and photos again after so long. I feel a bit more involved in his life after so long.....' (Molly)

'..... [Katia has] helped me be in ALL social services meetings. Really made me feel involved in my kids life's It made me feel connected and made difficulties so much easier as I knew what was going on with my children at all times and I had a say which has been AMAZING. It's helped me remain focused and calm and helped me feel like a mum which I am so grateful for' (Ness)

Despite some initial hesitancy and suspicion of Social Workers (often rooted in negative experiences and perceptions of previous involvement with social services), both Social Workers have been successful in engaging mothers in positive working relationships. The mothers have clearly felt that having an advocate has ensured representation of their voices, which has led to increased or maintained involvement in their children's lives.

'Becky has supported me with my children and always kept her word [...]. Becky went to the effort of finding out my son's Social Worker so quickly and passed on a list and letter of all his favourite foods and activities to the foster parents. Becky has made the process of being away from my son easier. I still feel like I am a part of his life. Due to the complex case I am going through I have felt very alone and was almost ready to give up. Becky came and

listened to me, guided me and gave me the fight I needed to carry on.' (Paula)

Mothers, who had previously felt 'invisible' and 'unheard',²⁰ felt that the involvement of the prison Social Workers helped them to be seen and heard, which they felt was important and productive in terms of their relationships with their 'outside' Social Workers and importantly their mother and child outcomes.

'Having a Social Worker in prison helped because social services respond and so do other professionals. Becky has found out information for me to help understand situations and have a different outlook on situations. Having Becky here helps and shows that we'll can work with a Social Worker that I can trust to help me.' (Amal).

'My Social Worker [Becky] has supported me with my court paperwork and given me the confidence and advice on how to respond to social services and court.' (Nadia).

The mothers have clearly felt that having an advocate has ensured representation of their voices, which has led to increased or maintained involvement in their children's lives.

In one particularly poignant instance, the prison Social Worker was able to work with both the mother in prison and social services in the community to restore long lost contact between mother and child. The mother is serving a long prison sentence. It had been a challenging and complex case and the mother, initially feeling overwhelmed and hopeless at the beginning of her sentence, had lost contact with social services and felt her son would be 'better off without her'. Her son had also initially not wanted contact with his mother. However, through mediation, patience and compassionate work, the prison Social Worker was able to restore contact with social services outside, leading to mother and child having postal contact after a seven-year period of no contact at all. Furthermore, community-based social services agreed to sustain communication with the imprisoned mother, which they had previously refused to do. This example really highlights the importance of ongoing contact and support from social services. As Beresford highlights, feelings change, time moves on, children and mothers

19. All mothers' names are pseudonyms
20. See Baldwin 2021 as per footnote 17

change their minds about contact, and as such decisions made in the aftermath and shock of the initial separation and sentencing should not always be considered permanent.²¹

Demonstrating further positive impact, the pilot project Social Workers, Katia and Becky, have supported mothers through a range of different difficulties including the adoption process, challenging planned adoption, re-establishing visits, preparation for release, assisting mothers in understanding their legal rights and related childcare proceedings paperwork. They have also facilitated mothers to undertake mothering-related tasks such as registering their child at school, or informing foster carers of child needs. Referrals to the social workers come from mothers themselves, often after other mothers have had positive experiences with the Social Workers and then encouraged others to seek support. Referrals have also been received directly from the wing-based officers, induction/reception staff and from the Offender Management Unit. The two prison Social Workers have both been welcomed by prison staff and some of whom have evidenced the Social Workers' positive impact:

'Since Becky has been at HMP Eastwood Park she has proven herself to be an invaluable asset to the team. Within our role as officers on the MBU we often liaise with community Social Workers for referrals and assessments. This can be challenging at times with some community teams not understanding the urgency of the referrals and Becky has often assisted with speeding the process along due to her knowledge and understanding of the referral and assessment process [...]. She is also breaking down the misconception for prisoners that Social Workers have a negative impact on their lives'. (MBU officer).

'The work Katia has been doing has assisted me immensely in my role as a Prison Offender Manager and is invaluable. I would never be

able to support women/mothers in the way that she can as we just don't have the time or experience to invest in them. Katia is experienced and knowledgeable in her role which gives me confidence that mothers I manage, and their children are being given the best support and chances at moving forward.' (Offender Manager)

The project Social Workers themselves feel they are viewed positively by the prison, especially by prison officers.

'They [the officers] do appreciate us and what we do, not least because it frees up their time and we take back some of the things they were doing but felt maybe wasn't their role- but no one else was doing' (Becky).

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The two prison Social Workers have also received very positive feedback from 'outside' social services and other agencies about their role. Outside agencies have described how not only have they benefitted in terms of improved knowledge and understanding of the challenges and experiences of mothers in prison, but also how their presence has contributed positively to outcomes for children.

'I honestly think that the children have hugely benefited from the communication I have had with you (Katia), and Zuri [mum] also. I hope that having established a relationship with Zuri prior to her release will help her to continue to do well and be able to sustain a positive relationship with the children with my ongoing support'. (Outside Social Worker)

Previous research has demonstrated that children having contact with imprisoned parents (where appropriate) is beneficial in terms of wellbeing and outcomes for children.²² Obviously, in the context of appropriate safeguarding, it has been evidenced that improved and maintained contact between mothers

21. Beresford, S. (2018) 'What About Me?' the Impact on Children When Mothers are involved in the Criminal Justice System. Prison Reform Trust. Available At; <http://www.prisonreformtrust.org.uk/portals/0/documents/what%20about%20me.pdf>

22. Beresford, S., 'What About Me?' (2018) The Impact on Children when Mothers are Involved in the Criminal Justice System. <http://www.prisonreformtrust.org.uk/portals/0/documents/what%20about%20me.pdf>

and their children during a period of maternal incarceration, has a positive impact on mothers and children, and importantly on their relationships post-release.²³ It is clear that the social work project has a significant role to play in improving outcomes for children and families affected by imprisonment.

Conclusion

The prison social work role has contributed positively to the welfare and outcomes of both mothers and children. We are certain that the two remaining years of the project will only serve to confirm what is already being evidenced. We know that a significant impact of the recent and ongoing pandemic has been an increase in self-harm rates amongst prisoners, especially in women's prisons.²⁴ This has been attributed, at least in part, to the loss of contact with loved ones, especially children: a painful reminder of the connection between maternal wellbeing/self-harm and familial contact.²⁵ Any services that work deliberately to improve and maintain contact and outcomes for mothers and their children must be actively pursued and supported.

We argue strongly for the prison Social Worker role to be extended and supported permanently in all women's prisons. We would argue that social work

training should include knowledge and understanding about the importance of supporting imprisoned mothers and their children, more effectively and consistently than currently occurs. We would like to see 'Criminal Justice social work' per se explored more fully in social work training and practice, which we feel would reduce 'silo' working and encourage and facilitate increased multi agency working — which is often so essential when working with criminalised mothers. In a similar vein we would like to see social work students offered placements in prisons with a view to informing future practitioners so that they never again view mothers in prison as '*out of sight and out of mind*'.

We end this paper with a final quote from Jo Mulcahy, Assistant Director of Services (Pact), and line manager for the two Social Workers.

'I feel like there's such a massive difference because of this project especially where mothers' voices were previously not represented. There is so much potential to make a significant difference to mothers and children's lives and their outcomes, it has to be continued — it is the right thing to do.'
(Jo Mulcahy).

23. See Baldwin 2021, as per footnote 17 and also Booth, N. (2020) *Maternal Imprisonment and Family Life: From the Caregiver's Perspective*. Policy Press.

24. Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to September 2021 Assaults and Self-harm to June 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029027/safety-in-custody-q2-2021.pdf

25. See Baldwin, as per footnote 17.

Do prisoners have the right to create a family?

A comparative approach of the prisoners' access to assisted reproduction in the United Kingdom, France and Belgium

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Can everyone create their own family whether naturally or via medical techniques? That's the question we are asking when exploring access to assisted reproduction for prisoners. The World Health Organisation states that around 48 million couples and 186 million people are impacted by infertility in the world.¹ The opening of assisted reproduction to same sex couples and single women in many European countries makes it a very central and valuable technology for many families bearing in mind that it is even more complicated to conceive for detainees than for the rest of the population due to imprisonment.² Considering imprisonment strips detainees from their legal rights, it should not deprive them from their right to maintain family links and, by extension, their right to create a family. Hence, we have to envisage the possibility for detainees to access assisted reproduction as well as the rest of the general population.

Methodology of the research.

This article is the result of a research in Comparative Prison Law and penal policies that I conducted in the Université libre de Bruxelles as part of a project funded by the Fonds de la Recherche Scientifique and coordinated by Professor Damien Scalia.³ We studied the academic literature on assisted reproduction and the very little policy guidance which exist in the three countries (France, Belgium and the

UK) on the specific topic of access to assisted reproduction by prisoners.

We aimed to collect empirical data in order to understand how the lack of written norms would impact the practical access to these technologies by detainees. Unfortunately, we encountered many difficulties. Indeed, most of the interviewees had nothing to say on that matter and were not even aware that detainees were allowed to access assisted reproduction. Moreover, we struggled to be granted access to conduct our research in prison in the three studied countries. Thankfully, we were able to access complaints to the French National Preventive Mechanism (NPM), the *Contrôleur général des lieux de privation de liberté*, which helped us to understand better the difficulties prisoners were facing. We also interviewed two prison governors, one *juge de l'application des peines*⁴ and one Criminal Lawyer in France. As for Belgium, we interviewed three organisations working in the prison field, four probation services and one prosecutor in the Brussels region. We managed to get information directly from interviewing staff at hospitals and clinics (only two hospitals in Brussels replied to us, unfortunately providing no conclusive answers). We were not granted access to English and Welsh prison governors and directors. However, we received helpful answers from the Human Fertilisation and Embryology Authority, which is the competent authority in the field of assisted reproduction in the UK. Notwithstanding those tremendous barriers, this article will attempt to provide

1. WHO, *facts sheet*, <https://www.who.int/news-room/fact-sheets/detail/infertility>

2. For example, in December 2021, there were 75 881 male prisoners and 3211 female prisoners in England & Wales: Ministry of Justice, *Prisons data*, <https://data.justice.gov.uk/prisons>. At the same time, on the 1st of December 2021, there were 67 759 male prisoners and 2233 female prisoners in France: Ministère de la justice, *statistiques pénales de la population écrouée*, <http://www.justice.gouv.fr/prison-et-reinsertion-10036/les-chiffres-clefs-10041/statistiques-mensuelles-de-la-population-detenu-e-et-ecrouee-22209.html>.

3. The research project is called "Building a family across imprisonment" and it focused on the Law of union and filiation in prisons in France, Belgium and the United Kingdom. This research started in April 2021 and will end in April 2023.

4. The *juge de l'application des peines* is the magistrate in charge of the sentencing pathway of a sentenced individual in France.

insights into the obstacles that detainees face when wanting recourse to assisted reproduction.

The Law of assisted reproduction in France, Belgium and the United Kingdom.

According to Article L. 2141-1 of the French *Code de la Santé publique*, 'medically assisted procreation refers to clinical and biological practices allowing in vitro conception, conservation of gametes, germ tissue and embryos, embryo transfer and artificial insemination'. This is also the definition which is given in Section 1 of the *Human Fertilisation and Embryology Acts (HFA)* 1990 and 2008 to be applied in the UK and in article 2(a) of Belgian *Loi du 6 juillet 2007 relative à la procréation médicalement assistée et à la destination des embryons surnuméraires et des gamètes*.

The new Article L. 2141-2-11 of *Code de la santé publique* recently opened up the scope of assisted reproduction to single women and same sex female couples. As for Belgium, Article 4§1 of the *Loi du 6 juillet 2007* enables any woman below 45 years of age to recourse to in vitro fertilisation (embryos implantation or gametes insemination). As for the UK, single women can have recourse to intrauterine insemination (also known as artificial insemination) and any couple is able to recourse to infertility treatment.⁵ These medical processes are generally lengthy and require constant medical monitoring. It is therefore not entirely unreasonable to imagine that a detainee on remand, who has started an assisted reproductive process with their partner prior to their imprisonment, would wish to continue it during their time in custody. Similarly, a detainee serving a sentence might wish to start this medical process during their time in jail, whether or not they have a partner or if their partner is also detained. Hence, this matter deserves consideration.

Research question and outline of the article.

Studies have already been conducted on the inequality for certain marginalised people to access fertility treatments. For example, Michelle Weldon-Johns applied Schiek's intersectional approach of Discrimination Law around the three nodes of 'Race', Gender and Disability' when examining the access to assisted reproduction.⁶ According to Weldon-Johns, single women, people with special needs or ethnic and religious minorities seem to encounter various discriminations when accessing assisted reproduction techniques.⁷ This is also the case for people who are imprisoned. Exploring the access of assisted reproduction technologies by detainees enables us to examine the gap between the common principles of Family Law and their application to the prison environment. Moreover, opening assisted reproduction technologies to detainees raises an ethical question in light of its moral concern: can a detainee have the right to found a family? While the existence of this right has been ambiguously recognised by the European Court of Human Rights (I), its respect in domestic law meets numerous legal, financial, and material obstacles rendering it almost impossible (II). In light of the prisoners' frequent stigma as 'bad parents',⁸ our research aims to question the extent of State intervention in the private lives of marginalised populations (III).

I. Questioning the prisoners' right to create a family

The loose protection of Article 8 of the ECHR.

Article 8 of the ECHR protects the private and family life of all persons, whether or not they are detained.⁹ Imposing a double obligation on Member States, the authorities must not only ensure that the prisoners' family life is respected, but must also refrain themselves from interfering in it.¹⁰ Maintaining the detainees' family ties is also part of the scope of Article 8 of the

5. Section 42, HFA, 2008.

6. Weldon-Johns M. (2020). *Assisted Reproduction, Discrimination, And The Law*. Routledge, Coll. Routledge Focus; Schiek D., & Lawson A. (2011). *European Union Non-discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination*, (eds), Routledge; Schiek D. (2016). Intersectionality and the Notion of Disability in EU Discrimination Law, CML Rev, 53, 35-63.

7. See footnote 6.

8. Amado A., op. cit., 2020, §598 and subs; Touraut C., *La famille à l'épreuve de la prison*, PUF, Coll. Le lien social, 2012; Cardì C., « Le féminin maternel ou la question du traitement pénal des femmes », *Pouvoirs*, 2009/1 (n° 128), pp. 75-86. ; Ricordeau G., *Les détenus et leurs proches, Solidarités et sentiments à l'ombre des murs*, Autrement, Coll. Mutations, 2008 ; Cardì C., « La " mauvaise mère " : figure féminine du danger », *Mouvements*, 2007/1 (n°49), pp. 27-37 ; Hannah-Moffat K., « Gendering Dynamic Risk : Assessing and Managing the Maternal Identities of Women Prisoners », in Hannah-Moffat K. et O'Malley P. (eds.), *Gendered Risks*, Londres, Glasshouse Press, 2007, pp. 229-247.

9. Concerning the guarantees of Article 8 of the ECHR on the prisoners' private and family life, cf. *Messina v. Italy*, 28th of September 2000, n° 25498/94; *Lavents v. Latvia*, 28th of November 2002, n° 58442/00; *Nowicka v. Poland*, 3rd of December 2002, n°30218/96. Amado A., *L'enfant en détention en France et en Angleterre, Contribution à l'élaboration d'un cadre juridique pour les enfants accompagnant leur mère en prison*, Coll. Bibliothèque des thèses, Mare et Martin, 2020, §81 and following; Simon A., *Les atteintes à l'intégrité des personnes détenues imputables à l'État*, Dalloz, Coll. Bibliothèque de la Justice, 2015, §23; Belda B., *Les droits de l'homme des personnes privées de liberté*, Bruylant, 2010, §52 and 53.

10. *Marckx c/ Belgique*, 13th of June 1979, n°6333/74.

ECHR, which explains that public authorities must protect the relationship that prisoners have with their children.¹¹

In the Grand Chamber case *Dickson v. United Kingdom* (4th of December 2007), the ECHR found the UK in breach of Article 8 for not allowing a detainee to recourse to assisted reproduction¹². In this case, one of the applicants was a detainee who had been denied access to assisted reproduction for which he claimed a breach of Article 8 and Article 12 of the ECHR. As sexual intercourse is prohibited in prison in the UK, unsupervised visits are not permitted.¹³ Given the length of his prison sentence and his wife's advanced age, the applicant alleged that they would be unable to start a family other than by means of assisted procreation. This application was refused on the grounds that the absence of a parent for a long period of time would have a negative impact on the child, as the best interests of the unborn child was at stake. The Grand Chamber of the ECHR found the UK in breach of Article 8. While the Strasbourg judges recognised that the prohibition of unsupervised visits in prison should be left at the Member states' discretion,¹⁴ they affirmed that this prohibition could not be such as to prevent a person from founding a family. If the interest of the child was the very object of the balancing exercise when measuring the interference with

Article 8, it could not be used to deprive people of their right to procreate — especially as the second applicant was not imprisoned and could take care of the child alone while awaiting the end of her husband's prison sentence.¹⁵

At first, this case seems to reinforce prisoners' right to access assisted procreation under the scope of Article

8. However, on closer look, does this case really offer prisoners the right to found a family? Considering the very specific circumstances of the case, it is not possible to assert the existence of such a European right. Would this case apply to France, where prison rules allow prisoners to see their relatives in unsupervised visits? In the *Dickson* case, the applicants did not allege any infertility or serious genetic diseases. They were questioning the very impossibility, under English law, to start a family while serving a long sentence in prison without being eligible to release on temporary licence. Indeed, the Strasbourg judges made very clear that the refusal to authorise assisted procreation had to be assessed in the light of the lack of unsupervised visits. Consequently, this case does not confer to prisoners an absolute right to create a family under Article 8 of the ECHR.

As far as Belgium is concerned, the healthcare system in prison is still a penitentiary system independent from the national one for the rest of the population.

II. Assessing the prisoners' access to assisted reproduction

A. Legal obstacles

The mediocre penitentiary health system — Belgium. As far as Belgium is concerned, the healthcare system in prison is still a penitentiary system independent from the national one for the rest of the population.¹⁶ Practically, this means that detainees are being treated differently to the rest of

the people, with different means and separate doctors. As a result, detainees face a clear discrimination compared to other citizens since their medical treatments are extremely poor, mediocre and inadequate, even for daily basic health emergencies.¹⁷ Therefore, when I interviewed members of the Prison Service (Direction Générale des établissements

11. *Messina v. Italy*, 28th of September 2000, *op.cit.*; *Lavents v. Latvia*, 28th of November 2002, *op.cit.*; *Nowicka v. Poland*, 3rd of December 2002, *op.cit.*

12. *Dickson v. United Kingdom*, Gd ch. 4th of December 2007, req. n° 44362/04, D., 2008, p. 1435, chron. J.-C. Galloux et H. Gaumont-Pratet ; RSC, 2007, p. 350, obs. P. Poncela ; AJ Pénal, 2008, p.47, obs. Herzog-Evans M.. Mulligan A., « Reproductive rights under article 8: the right to respect for the decision to become or not to become a parent », *The European Human Rights Law Review*, n°4, 2014, pp. 378-387.

13. Stevens A. (2017) « Sexual Activity in British Men's Prisons: A Culture of Denial », *The British Journal of Criminology*, pp. 1-27; Stevens A. (2015) « Sex in Prison: Experiences of Former Prisoners », *Report by the Commission on Sex in Prison*; The Howard League for Penal Reform. (2014) « Women in Prison: Coercive and Consensual Sex », *A Briefing Paper by Commission on Sex in Prison*; Banbury S. (2004) « Coercive Sexual Behaviour in British Prisons as Reported by Adult Ex-Prisoners », *Howard Journal of Criminal Justice*, n°43(2), pp. 113-30.

14. *Dickson v. United Kingdom* (2007), §81.

15. *Dickson v. United Kingdom* (2007), §76.

16. Article 87 and seq. of the *Loi de Principe du 12 janvier 2005* confirmed that the prisoners' healthcare had to be equivalent to the rest of the population. Hence they were entitled to public healthcare. However, the law never came into force due to a lack of public budget. Federaal Kenniscentrum voor de Gezondheidszorg - Centre Fédéral d'Expertise des Soins de Santé (KCE), « Le KCE propose des pistes de réforme pour améliorer les soins de santé en prison », *communiqué de presse*, <https://feditobxl.be/fr/2017/10/kce-propose-pistes-de-reforme-ameliorer-soins-de-sante-prison-kce/>

17. Thézé D., Saliez V. (2021) « L'urgence d'agir pour la santé des personnes détenues, constats et recommandations », report, l.care, mars, available online : COMMUNICATION - OneDrive (sharepoint.com)

pénitentiaires), organisations and probation officers (services d'aide aux justiciables), most of them had never heard of a female or male detainee trying to access assisted reproduction in prison. The only case that one organisation had seen was where a female detainee wanted to freeze her eggs during her sentence so to preserve her fertility. However, she confided to members of the organisation that she was feeling very lost about this wish as she had nobody to turn to or enquire about it with. The organisation had managed to facilitate an appointment with a gynaecologist but were unsure about the outcome. Indeed, it was interesting to observe that most interviewees were very surprised, if not shocked, by our questions as they explained the healthcare system was so poor that it was already tremendously difficult for detainees to get basic treatment for their health conditions, let alone for non-emergency procedures. In that case, it seems that access to assisted reproduction is very far from being possible for prisoners, leaving them unable to exercise their civil right to found a family.

The lack of information in France. In France, there exist no specific protocols like for HM Prison and Probation Service (HMPPS). This makes it very difficult for detainees to understand the process to access assisted reproduction. The NPM have received six complaints since 2011, some of which were requesting information. According to Article L. 2142-1 of *Code de la santé publique*, 'biological activities for assisted procreation may only be carried out in accredited medical biology laboratories'. As a result, these activities cannot be accessed within prisons, although an ambulatory care consultation unit is part of each prison. No specific prison rule or protocol has been enacted on that subject, which leaves no choice but to apply the rules on exceptional authorisations to leave and medical extractions. Aside from prisoners eligible for temporary release, which may also be left at the discretion of judges,¹⁸ individuals may be able to access

assisted reproduction, whether on remand or convicted, through two mechanisms: escorted authorisation to leave (*autorisation de sortie sous escorte*) or medical extraction.

B. Material obstacles

The complicated regime of exceptional escorts in France. Accused individuals are not authorised to leave the prison while on remand except in the event of a medical extraction or after having obtained an escorted authorisation to leave. Provided for in Articles 148-5 and 723-6 of the *Code de procédure pénale*, an escorted authorisation to leave is defined as a special and exceptional authorisation, issued by the competent authority, to allow individuals to attend a particular event. Individuals are then escorted by prison staff or police staff to the dedicated place. Although the grounds for issuing an escorted authorisation to leave permit had never been defined, the *Chambre de l'application des peines* stated that only 'a seriously ill or deceased relative' constitutes a reasonable motive.¹⁹ It would therefore seem that assisted reproduction would not be included in this case law.

With regards to medical extractions which are open to remand and convicted prisoners, it could encompass sperm donation or in vitro fertilisation. Medical extraction is the transfer of a detainee to a health institution for a consultation, a medical examination that cannot be provided within the establishment, or a hospitalisation.²⁰ However, this measure must necessarily take place in the local public healthcare centre, which may render it very difficult if that particular centre does not carry out assisted reproduction techniques as provided for in Article L. 2142-1 of the *Code de la santé publique*.²¹ Will a sperm donation or an artificial insemination be considered as any of the above motives determined by Article D. 396 of the *Code de procédure pénale*?

In France, there exist no specific protocols like for HM Prison and Probation Service (HMPPS). This makes it very difficult for detainees to understand the process to access assisted reproduction.

18. Art. D. 142-1 et seq. of the *Code de procédure pénale*. Bonis-Garçon E., Peltier V., *Droit de la peine*, Lexisnexis, 3rd edition, 2019, §1313-1314.

19. Chap. Paris, 10 juillet 2017, n° 1704/190, *AJ pénal*, 2017, p. 454, obs. Herzog-Evans M..

20. Art. D. 391 and ss. of the *Code de procédure pénale*.

21. Art. R. 6111-27 of the *Code de santé publique*.

Article L. 2141-10 of the *Code de la santé publique* specifies that applicants for assisted reproduction must first undergo several ‘specific interviews [...] with one or more doctors and other health professionals from the centre’s multidisciplinary clinicobiological medical team’. The process is very long and requires a substantial material investment on the part of the applicant. At the same time, medical extractions are extremely costly to the State as they require several police officers or prison guards and a specific vehicle for the entire time of the extraction. Prison medical extractions are also very difficult to match with the specificity of some medical techniques required, such as in vitro fertilisation which requires hormonal treatments, ovarian stimulation and puncture based on the woman’s cycle hence, meaning appointments often being changed at the last minute according to that person’s cycle. It is even more complicated considering that prisoners are normally never informed of their medical extraction prior to the day it happens, for security reasons to avoid any escape plan on their behalf. The interviews I conducted with lawyers, judges and the NPM lead me to understand that some people who attempted to access assisted reproduction from prison did not get authorised to be extracted on the basis that there were too many medical appointments involved.

Medical extractions are extremely costly to the State as they require several police officers or prison guards and a specific vehicle for the entire time of the extraction.

C. Financial obstacles

Specific protocol to access fertility treatment in prison — UK. In HMPPS has a specific protocol to grant access to assisted reproduction techniques to prisoners.²² The enactment of a specific protocol indicates there to be an interest among the prison population to access assisted reproduction. It also enables the prison population to have better access to information via this specific protocol, in contrast to the French and Belgian systems which do not have such

facilitated access to information. However, difficulty still lies within the existing process. Indeed, it specifies that an application to access assisted reproduction must be made to HMPPS, who will evaluate it on a national level before deciding whether to approve it. It is hard to understand the criteria being used to evaluate such applications since there is no published information about them. However, we can already conclude that there is another level of complexity added to the generally lengthy and costly process for assisted reproduction techniques.

The impossible financial burden of fertility treatment — UK. The first condition set by HMPPS’ protocol states that all costs of the various techniques rest on the prisoner, as this is the case for the rest of the population. The National Health Service does not nationally cover the costs of the assisted reproduction techniques since local Clinical Commissioning Groups (CCGs) decide who is eligible to be funded for access, and who is not, across the UK.²³ Wales, as well as Northern Ireland and Scotland, make their own decisions regarding funding assisted reproduction.²⁴ Therefore, it could very well be that from one prison to another, depending on the detainees’ CCG, their artificial insemination or in vitro fertilisation may not be funded. One round of in vitro fertilisation costs around £5,000,

aside from the hormonal treatments or the medical appointments, and people generally need to go through several attempts for it to be successful. Consequently, the cost of those techniques could amount to a tremendous amount of money for the detainee. In addition, the prisoner must also pay for staff resources (for example escort staff), transport (whether it be a prison vehicle or private hire vehicle) and, where applicable, a risk assessment of the hospital/fertility clinic.²⁵ Finally, fertility services are sometimes not provided to women aged 35 years or older, depending on the local CCG, which may render it even more impossible for some female detainees.²⁶

22. Prisoner Applications to Access Fertility Treatment Policy Statement, available on the Freedom of expression request website, <https://www.whatdotheyknow.com/request/801152/response/1910980/attach/html/4/Policy%20Statement%20Prisoner%20Applications%20to%20Access%20Fertility%20Treatment%20March%202021.pdf.html>
23. BPAS, *BPAS investigation into the IVF postcode lottery: an examination of CCG policy for the provision of fertility services report*, 2020, <https://www.bpas.org/media/3369/bpas-fertility-ivf-postcode-lottery-report.pdf>
24. See footnote 23.
25. Ministry of Justice, Disclosure team, *Freedom of Information Act (FOIA) Request on the access to fertility treatment for serving prisoners*, <https://prisons.org.uk/prisonerfertilityw.pdf>
26. See footnote 23.

For those reasons, it seems hard to imagine that many detainees are able to access assisted reproduction in the UK.

III. Examining the social stigma of prisoners as future 'bad parent'

The authorities' discretion in prisoner's ability to create a family. Whether it be for medical extraction or temporary release, the granting of such measure depends on the competent authority's approval which very often will be shaped by moral and ethical subjective points of view about whether prisoners are 'good parents'. In all three countries, approval also depends on the specifics of fertility services use — whether the English CCG's assessment to allow funding of the technique, or the English, French and Belgian possibility for health institutions to refuse patients according to certain criteria. Some of the criteria involve the welfare of the child (including the need of that child to have supportive parenting) and of any other child who may be affected by the birth, as the Human Fertilisation and Embryology Authority make very clear.²⁷ Indeed, in Belgium, article 5 of the *Loi du 6 juillet 2007* affirms the fertility institutions' clause of conscience in relation to allowing applicants to receive any kind of fertility services. Moreover, the hospitals and clinics I interviewed in Belgium explained that they would need to run an assessment of the incarcerated parent's criminal background to determine if it could have an 'incidence on their parenting ability' before allowing the application to proceed ('*une incidence sur leur parentalité*'). As for France, in addition to the aforementioned practical difficulties, the few complaints that have been made to the NPM indicate that hospitals and clinics may hide behind technical problems, to simply refuse to allow prisoners to start a fertility process, without trying to organise it in the first place. Others refuse to have handcuffed prisoners accompanied by police officers in front of other patients. In one case, a prisoner and their spouse could not get an unsupervised visit because there was too much demand for the number of unsupervised visit units. As they wished to conceive a child, they applied

for the usage of an assisted reproduction technique which was refused by the fertility hospital doctor because the couple had to encounter fertility issues first, and to try for at least a year to conceive naturally, before applying for fertility services. Neither of the two conditions were satisfied by the couple. As for the *Dickson* case, this argument could be considered fallacious since prisoners are de facto in an unequal position compared to others when attempting to conceive naturally. Even though the law has changed since that specific doctor's answer (the infertility requirement no longer exists), one might conclude that authorities sometimes use legal arguments to mask ideological denials of Human rights. In an interview with a *juge d'application des peines* in France, we were explicitly told that she would never allow any prisoner temporary release for an assisted reproduction appointment in any circumstances on moral and ethical grounds.

Balancing the best interests of the unborn child and the prisoners' right to create a family?

The reasons given in the ECHR's *Dickson* case already shed some light on the grounds on which such applications could be refused. In *Dickson v. United Kingdom* (2007), the English government justified its refusal to allow a prisoner access to assisted reproduction on the harmful effect that the parent's separation would have on the welfare of the unborn child. In response, the Strasbourg judges considered the welfare of the child to still be respected because one of the two parents would be physically present to take care of the them.²⁸ On the basis of this reasoning, the principle of the best interests of the unborn child could justify State interventionism in the family life of prisoners. It is even more surprising that one is dealing with a hypothesis of an unborn child since the child is yet to be conceived. State interventionism echoes the criminological theories according to which prisoners, and particularly female detainees, are stigmatised as 'bad parents'.²⁹ As a possible drift in the interpretation of this principle by judges, the best interests of the child could be diverted from its original meaning to control the births of marginalised groups of people, such as detainees.

27. In the UK, cf. Guidance Note 8 of the HFEA *Code of Practice*, pp. 99 – 103.

28. *Dickson v. United Kingdom* (2007), §76.

29. Cardi C., op.cit., 2009; Codd H., *In the Shadow of Prison, Families, Imprisonment and Criminal Justice*, Oxon, Routledge, 2008, p. 131; Hannah-Moffat K., op.cit., 2007; Cardi C., op.cit., 2007; Rostaing C., (1997). *La relation carcérale : Identités et rapports sociaux dans les prisons de femmes*, PUF, Coll. Le lien social; Carlen P., (1983). Routledge and Kegan, p. 155.

Book Reviews

The honest politician's guide to prisons and probation

By Roy King and Lucy Willmott

Publisher: Routledge (2022)

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Pen Picture: Dr. Jamie Bennett is the Chief Strategy Officer at the Youth Justice Board

Reading academic books can be type-2 fun — a bit of a slog at the time but in retrospect it is rewarding and enriching. It was therefore a pleasant surprise to pick up this book and find that it was so engaging that I zipped through it in a few days. It offers insider accounts provided by the political and professional elites that have presided over prisons and probation since 1990, including interviews with six director generals of prisons, two directors of probation, sixteen Secretaries of State for Home Office or Justice, nine ministers responsible for prisons and probation, four Lord Chief Justices, four Chief Inspectors of Prisons and two Chief Inspectors of Probation. This unparalleled access makes this a unique, fascinating and valuable book.

The book has been written by Professor Roy King, a distinguished criminologist who has been conducting international research since the 1970s and has been regularly sought out to offer advice to politicians and senior professionals, and Dr. Lucy Willmott, who is based at University of Cambridge and has over two decades of research experience, including applied research in prisons and secure hospitals. They are

knowledgeable and insightful research partners, able to productively engage the interviewees, gathering rich data and presenting it compellingly. The title of the book is not intended to suggest that politicians are dishonest, but is instead a homage to Norval Morris and Gordon Hawkins' 1970 book *The honest politician's guide to crime control*. Both books are effectively intended to nurture evidence-based criminal justice infused with a liberal-humane set of values.

The book is set out in sections that follow the course of the governments of the last three decades — Conservative 1990-97, New Labour 1997-2010, Conservative-Liberal Democrat Coalition 2010-15 and Conservative from 2015 up to 2019. The chapters briefly introduce the political context, then present the accounts of the primary players — politicians and officials — so as to explore the major issues, primary aims, the critical events and significant challenges. The presentation of the accounts attempts to make any commentary or critique relatively discrete and constrained, allowing people to offer their own perspective. While this book does give retrospective access to the 'top table', such accounts need to be seen in a wider context. In particular, the people being interviewed do not have the same lived experience of those subject to or working in prisons or probation during that period, but are instead removed and at some distance. There is also often a gap between intention and reality, and between policy and practice, which means that rhetorical accounts present a more coherent picture than is the actuality. The data from

these interviews therefore offers a particular perspective or set of experiences rather than the definitive account. Nevertheless, the novelty and value is that the experiences of such a wide range of elite participants is rarely drawn together as comprehensively as they are in this book.

One of the reasons I found this book so fascinating is that it effectively covers the period of time in which I have had an interest in prisons. I recall seeing the images of the Strangeways riot on the television news in 1990 and as a law student in the 1990s learned about the Woolf report and the problems of order in prisons. Having joined the Prison Service in the mid-1990s, my professional life is being played out in these pages. There will be many others with similar experiences who will read this book looking back over a working life, with all of the optimism, satisfaction, frustration and anger that comes with it. This is three decades that have seen sustained increases in the prison population; varying levels of economic investment, and; continuous organization change, often informed by neo-liberal and commercial practices.

The book closes with the authors making a number of suggestions for a better politics of criminal justice. They identify the significant problems that arise from the changing tone of public discourse about criminal justice becoming more punitive; the rapid churn of politicians and officials meaning that a consistent direction cannot be maintained, and an erosion of the balance between executive, legislature and judiciary meaning that criminal justice has become more politicized. The

solutions, in the view of the authors, lie in a reduction in the prison population achieved through a systematic reform of sentencing, with measures to strengthen the independence of the judiciary as well as prisons and probation. None of these are new arguments, indeed in many ways they look backwards to a time when criminal justice was a less politicized issue and was largely led by expert criminal justice elites. The changes the author suggest are unlikely any time soon, as they recognize, but perhaps they are also failing to engage with contemporary society. One of the reasons that rational ideas of patrician elites have lost favour is that they aren't in tune with how significant parts of the population feel, whereas much populist rhetoric does resonate with many people. Perhaps the starting point to find better ways to communicate with the wider population is listening to their experiences and perspectives and engaging with them, whether that is through for example grass roots activism, education, or popular culture.

Roy King and Lucy Willmott deserve to be acclaimed for pursuing their research, getting the engagement of such a stellar cast and producing an engaging book. The data will be of huge value to those researching and studying prisons, and the insider account will be of immense interest to those who have been involved in prisons and probation over the last three decades. This book doesn't have all of the answers, no book could have, but I don't think any reader will come away without feeling they can and must do more to make a positive difference. The future of prisons and probation shouldn't solely be in the hands of honest politicians, academics or officials but also in the hands of honest citizens.

Understanding the Educational Experiences of Imprisoned Men: (Re)Education

By Helen Nichols

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Pen Picture: Angelique Mulholland is a Doctoral researcher focussing on the educational experiences and gender subjectivities of imprisoned men, and a former prison teacher. She is based at the Institute of Education, UCL's department of Education and Society.

There has been increasing interest in prison education over the last 10 years from recent successive governments and policy makers, as well as academics working hard to advance and understand better the educational experiences of imprisoned people. Helen Nichols' work is both located and integral to this uptick and offers a compassionate, informative and accessible in-road into understanding the educational experiences of imprisoned adult men in Britain today. I came across Dr Nichols' work whilst in my first teaching post in an adult male category B prison. Her newly published thesis, *An Inquiry into Adult Male Prisoners' Educational Experiences*,¹ deepened my understanding of the complexity of the educational experiences of the students in my classroom. Her book, *Understanding the Educational Experiences of Imprisoned Men*, thus reflects her 10 years of academic and teaching work in prisons, and has again offered invaluable insight to me, this time in my capacity as an aspiring prison education researcher.

Each chapter explores highly relevant themes connected to the educational experiences, identities and journeys of imprisoned men. The first chapter begins by identifying the tension for anyone serving time in prison, or for that matter, working in a prison education department. Nichols points out that the broad aims of prison and education are at odds: '...one aim is to punish and one aim to provide personal development' (p.13). It is within this tension, Nichols argues, that prison learners and educators must find a way to navigate the many complexities of prison life and the barriers that can impede educational flourishing. The first chapter also gives an interesting historical account of prison education as well as an overview of the present-day employability model, and a compelling argument for an alternative humanistic model based on 'care and dialogue' (p.19) for prison learners.

In the following chapters, Nichols discusses broad themes such as desistance, identity and relationships on the inside and outside of prison, and how these themes intimately connect with prisoners' educational journeys through prison. Her reflections are rooted in the words of people on the ground in prison, as each chapter has excerpts from serving prisoners, prison leavers and prison staff collated from her work over the last decade. In the course of these discussions, Nichols introduces the reader, through accessible language and an engaging tone, to some of the most important works of prison sociology. For example, Syke's seminal work *The Society of Captives* is discussed in chapter three, where she introduces his 'classic pains of imprisonment' (p.46) — deprivation of liberty, heterosexual relationships,

1. Nichols, HE (2016) *An Inquiry into Adult Male Prisoners' Experiences of Education*. Doctoral thesis, University of Hull.

autonomy, goods and services and security — followed by her (much needed) update of his work, and how education is used by many people in prison as a coping mechanism to many of these deprivations.

Chapter two is a must-read for aspiring prison researchers. Clearly outlining the practicalities of conducting fieldwork in prison, the important section on *Establishing rapport and speaking to vulnerable people* gives valuable advice for novice researchers on how to connect with people in prison during interviews and is followed by an honest and important discussion on a number of integral themes to conducting prison fieldwork. This includes feeling safe in prison, 'taking sides' (p.33) in the interview, perceptions of the researcher and their relationship with the prison establishment and most importantly, reflections on how criminological data has been historically presented without emotion, despite the suffering in the lives of the people behind the data. Building upon the important works of Jewkes,² Sloan³ and Liebling,⁴ Nichols argues that engaging with emotion as a tool throughout the research process is not weakness, but in fact a strength of a project. Summed up beautifully in the closing sentences of this chapter Nichols argues that prison researchers can conduct their research 'in a way that sheds light on the fragility of the human experience and is something which is integral to the study of social science' (p.43).

The penultimate chapter, *Education and Desistance*, is particularly compelling when reading the stories of those who have been able to move away from crime. This chapter centres on the stories of Liam and Steven, both of whom have managed to forge new, prosocial identities partly by engaging with education in prison. Nichols explains how a positive learner identity becomes an integral part of Maruna's redemption script⁵ and how desistance is not a linear process, but rather a challenge to change one's life, in the face of many external obstacles and personal demons, which haunt many who have experienced prison.

I'd highly recommend this book to aspiring researchers, especially those embarking on fieldwork with people in prison, busy prison practitioners who want a greater understanding of the theory and practice behind prison education and lastly policy makers. Nichols' work highlights the myriad of problems connected to prison education and how the barriers can stop some from progressing. The book highlights the challenge of navigating a path of personal development in an environment, like prison, which is fraught with turbulence and uncertainty. The many challenges that serving prisoners, prison leavers and prison staff experience in negotiating the barriers and tensions to educational fulfilment in prison is clearly delineated in the chapters of this book, and decision makers in government would gain positively from taking heed, and then acting on future prison education policy.

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Pen Picture: Scott Thomas is a life sentenced prisoner at HMP Berwyn

I was 31 when I came to prison and had not completed any formal qualifications since I had left High School back in 1992, when I achieved several GCSEs grade A to C, including Maths and English. Over the past 15 years in prison, I have completed over 30 courses, most of which have been between Levels 1 and 3. I have attained two Certificates in Higher Education with the Open University, one in Law and one in Environmental Studies, and I have almost completed a degree in Business Management. My plans are to try and move on to study a Masters then PhD, but as highlighted in Dr Nichols' book, the support provided to prisoners wanting to study beyond Level 2 is poor. Prison education is primarily focused on getting prisoners to engage in lower-level studies. I have individual drive and a passion to achieve my study goals and I have been able to open doors for myself that have helped me to access the courses and support that I need. I was also lucky enough to take part in a Learning Together module at Level 6, with Leeds Beckett University

2. Jewkes, Y. (2002). "Autoethnography and emotion as intellectual resources: Doing prison research differently." *Qualitative Inquiry*, 18(1): 63-75.

3. Sloan, J (2016) *Masculinities and the Adult Male Prison Experience*. London: Palgrave Macmillan.

4. Liebling, A. (1999) "Doing research in prisons: Breaking the silence?" *Theoretical Criminology*, 3(2): 147- 173

5. Maruna, S. (2001) *Making Good: How Ex-convicts Reform and Rebuild their lives*. Washington DC: American Psychological Association Books.

which was a unique experience and created a network of contacts in higher education that I still use for information and guidance to this day. Dr Nichols' book has for me highlighted the failings in the provision of support for those like myself that wish to study beyond Level 2, and I can only hope that prison Governors and education providers in our prison estate begin to place some resource into the provision of higher education sooner rather than later.

Having lived in the closed prison estate for the past 15 years, it is refreshing to read a book that is balanced and provides a true insight into the prison education system. *Understanding The Educational Experiences of Imprisoned Men* is not just the typical outsider's view of prison education, with detailed and considered analysis within each of the seven chapters, supported by contributions from prisoners past and present, and education staff who all provide vivid real-life testimony. Understanding the educational experiences of past and present prisoners is vital to inform future planning and development of prison education delivery and Dr

Nichols has successfully written a book that informs, reflects, and for me, provides some hope that my own studies in prison will contribute to a crime free life beyond the gate. Prison education has its own set of challenges, not least with the environment not being an ideal setting for study. However, as this book makes clear, engagement with education improves wellbeing, human capital, social capital, knowledge, skills, and employability.

It is also not a shock to me that engagement with education can significantly reduce reoffending. The proven one-year reoffending rate is 34 per cent for prison leavers, compared to 43 per cent for people who don't engage in any form of learning.¹ Literacy levels amongst the prison population remain significantly lower than the general population. Nearly two-thirds (62 per cent) of people entering prison were assessed as having literacy skills expected of an 11-year-old, more than four times higher than in the general adult population (15 per cent).² Dr Nichols' book helps us to understand the reasons behind these facts which can in turn help

us to understand how best to target prison education resources moving forward.

Dame Sally Coates' report in May 2016,³ made a number of recommendations to create a prison regime with learning at its heart. Subsequent changes to prison education contracts now allow greater flexibility to fund opportunities, such as arts, and informal learning to allow people to engage and progress their sentence,⁴ but more is still needed. Dr Nichols, in writing her book, has put the spotlight back on prison education and ignited fresh debate. Progress in the criminal justice system is always slow, but with a little effort and using this book as a guide, positive changes can be made. Through pulling together many studies and academic papers on this important subject, this is a powerful book that should be in every prison library and on the desk of all Governors and education providers to help inform future development and delivery of prison education. It will also be of interest to those working or studying in the field of criminology and social justice.

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1. Prison Reform Trust (2022). Bromley Briefings Prison Factfile: Winter 2022. London: Prison Reform Trust
 2. Prison Reform Trust (2022). Bromley Briefings Prison Factfile: Winter 2022. London: Prison Reform Trust
 3. Coates, S. (2016). Unlocking Potential: A Review of Education in Prison. London: Ministry of Justice
 4. Prison Reform Trust (2022). Bromley Briefings Prison Factfile: Winter 2022. London: Prison Reform Trust

PRISON SERVICE JOURNAL

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The *Prison Service Journal* is a peer reviewed journal published by HM Prison Service of England and Wales. Its purpose is to promote discussion on issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

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Observed Behaviour Indicators**

Javier Sánchez-Díaz and Lisa Edmondson

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we embed procedural justice principles into
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Jo Voisey, Flora Fitzalan Howard,

Dr Helen Wakeling, Nicola Cunningham, Scott Lane and Jayne Kirkpatrick

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**Do prisoners have the right to
create a family?**

**A comparative approach of the prisoners' access to assisted
reproduction in the United Kingdom, France and Belgium**

Ariane Amado