

PRISON SERVICE JOURNAL

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Focus on Disability

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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

Over recent editions, *Prison Service Journal* has set out to explore the issues surrounding current proposed and actual reforms of the criminal justice system. This discussion is continued in this edition through three articles. The opening article is a theoretical piece by Mhairi Aylott and Anton Shelupanov of The Young Foundation, discussing social impact bonds and payment by results. The work of the Young Foundation informed the development of Government policy in this area and this article explains the economic case for this approach, describes the main technical features and critically reflects upon the strengths and weaknesses. This article is essential reading for those involved in the criminal justice system. Complimenting this article is an interview with Rob Owen, Chief Executive of the St Giles Trust. An investment banker turned social entrepreneur, Owen represents a new breed of voluntary and charitable sector leader. In this interview he discusses the work of St Giles Trust, including their involvement in the social impact bond and payment by results pilot at HMP Peterborough. The third piece under this theme is Professor Hans Toch's more critical work in which he discusses the risks of economically focussed reforms leading to deteriorating conditions. However, consistent with his long history of optimistic argument for progressive reform, Toch argues that economic benefits can be gained from reforms that reduce the weight of imprisonment and increase participation and engagement of staff, prisoners and volunteers. In this work he is arguing for internal reform of prison administration that has both economic and social benefits. These three pieces are intended to navigate the reader to a more reflective perspective on the current discussion regarding the reform of prisons and punishment.

The bulk of this edition is dedicated to a special focus on the issue of disability in prisons. This draws on contributions from inside the prison system, from interest groups and academia. This is intended to raise awareness of this area as well as suggesting practical approaches to improve the quality of services. It is therefore aimed at encouraging practitioners in their endeavours to think about their work and make positive change. This section opens with two articles that take a broad perspective and set the agenda for the following discussion. Claire Cooper, Head of Equalities Group at the National Offender Management Service and Samantha Booth of HM Inspectorate of Prisons both set out the current state of play and highlight the shortfalls in practice as well as highlighting possible solutions and examples of good practice. Their work draws upon the reality of the lived

experience of imprisonment for prisoners with disabilities and both articles provide broad but humane accounts of the issues.

The discussion continues with four articles looking at specific issues. Jenny Talbot of the Prison Reform Trust has for many years worked towards highlighting the problem of prisoners with learning difficulties and learning disabilities. She has attempted to ensure that their voice is heard and that services are improved in order that they can receive the support that they need. Her work draws heavily upon testimonies of those prisoners and therefore offers an intimate insight. This article also draws upon her expertise in the field in order to direct practitioners towards those steps that they can take in order to make a difference. Steve Foster offers a legal analysis, exploring how the judiciary in UK and Europe have pushed the boundaries of equality through their decision-making. Warren Stewart looks at prisoners themselves and argues that they are a valuable source of peer advice and support. This can be linked with Hans Toch's argument that communities are a resource that can be drawn upon to provide voluntary service that is both sensitive and cost-efficient. Finally, Robert Steadman, Chair of the Disability Network, discusses the role of a staff support organisation representing and advocating on behalf of individual members of staff with disabilities and attempting to influence organisational policy, culture and build capability in managing the issues. Although these articles do not provide a definitive or comprehensive analysis of the issues of disability in prisons, they do provide an insight and a source for further reflection, discussion and action.

This edition closes with an interview with Bettina von Kameke, whose exhibition of photographs taken at Wormwood Scrubs received wide media attention in February and March 2011. To those working in prisons, the images captured a familiar institution but they also give a distance which encourages reflection about how individuals adapt and maintain their identity in a closed, total institution like a prison. Her work penetrates both the public and the private spaces of the prison and the prisoner.

Prison Service Journal continues to provide a distinctive approach that draws from inside the prison, revealing practice and exploring the lived experience, whilst also drawing from outside, offering analysis, criticism and alternative perspectives. It is by engaging with a range of perspectives that *PSJ* aims to encourage and facilitate not only thoughtful reflection but also progressive action.

Social Impact Bonds in Criminal Justice:

from interesting idea to business as usual

Mhairi Aylott is a Researcher working on social impact bonds at the Young Foundation and Anton Shelupanov is Programme Leader for Innovation and Justice at the Young Foundation.

History

Interest in Social Impact Bonds (SIBs) and tools for developing new investment approaches to address social problems has grown in recent years. There is extensive evidence of potential financial returns on investment in early years programmes and preventive measures which reduce demand on the justice system and save money.

Turning the merits of preventative programmes into concrete proposals for investment has proved challenging. However, there were numerous developments which accelerated thinking during the early 2000s. For example, there were steady advances within government in methods for assessing the impact of public investments on human capital, and for bringing more systematic analysis of the link between spending and social outcomes such as crime reduction or health improvements.¹ There was also widespread experience of private finance initiatives and public private partnerships, which helped advance the range of tools available to investors and contractors. Markets for carbon reduction developed, prompted by the Kyoto Treaty and the EU, which encouraged greater confidence in the potential to invest in social gains. There was also experimentation in health around initiatives such as advanced market commitments, in which a payer guarantees a market will be available for breakthroughs such as vaccinations for malaria.

The current spending squeeze in the UK means that there is more interest than ever in such tools to achieve greater value, and to tap into new sources of finance for social goals, particularly in the field of criminal justice. The Comprehensive Spending Review 2010 announced a reduction on public spending of £81bn by 2015. The Ministry of Justice has the task of reducing spend by £2 billion, 23 per cent of its budget by the end of 2015. The UK needs a strategy to reduce crime while saving money at the same time — Social Impact Bonds present such an opportunity.

Work on their design and implementation has been in train since early 2008, when the City Leader's Group (led by banker and Young Foundation

Chairman Peter Wheeler) began work to identify new types of investment vehicles for social outcomes. Some of this work was taken forward by a new organisation called Social Finance, which agreed the first SIB in the final days of the Labour government in early 2010. The Young Foundation coined the term 'Social Impact Bonds', and fed into Social Finance's work while also developing alternative models of SIBs, all of which shared the goal of turning social outcomes into investments to encourage ways of creating more good for less money.

The concept has also gained traction internationally. In Australia, New South Wales is implementing a Social Impact Bond to work with young offenders and President Obama's administration recently announced \$100 million for Social Impact Bond pilots in the US, terming them Payment for Success Bonds.

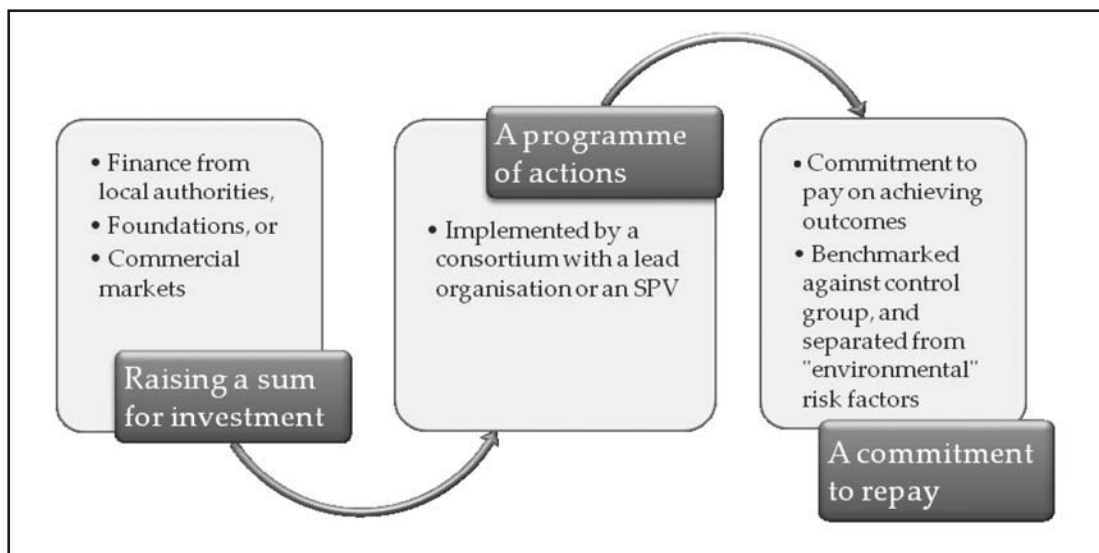
What is a Social Impact Bond?

Social Impact Bonds (SIBs) are funding mechanisms which invest in social outcomes. They have three elements:

1. Monetary investment
2. A programme of actions to improve the prospects of a group
3. Commitments by local or national government to make payments linked to improved social outcomes achieved by the group

Under a SIB, a payer (usually Government) agrees to pay for the measurable improved social outcomes of a project. This prospective income is used to attract the necessary funds from commercial, public or social investors to offset the costs of the activity that will achieve those better results. This approach is possible where better outcomes lead to tangible public financial savings. When agreed milestones are achieved (eg a specific percentage reduction in re-offending compared to a control group) the investor will be re-paid their original funding, with a return on investment, complimented by the knowledge that they have saved the government money, reduced crime and made our society a safer place.

1. For example see the recently launched journal *Evidence & Policy: A Journal of Research, Debate and Practice*.



There is interest and excitement surrounding SIBs, however they are one of a number of payment by results mechanism available to governments. Recognising this, Chancellor George Osborne has called for better commissioning, streamlined procurement and payment by results to deliver radical improvements to public services. The Ministry of Justice's Green Paper on offending and rehabilitation: *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, reaffirms this commitment.² The government has committed to carry out at least six new payment by results projects across the UK and the MOJ has stated that it is committed to adopting innovative approaches to reduce reoffending.³

SIBs offer the potential to align the incentives of service providers and central government, bring attention to the merits of preventive action, and importantly tap into new funding streams for civil society which faces deep cuts in governmental funding. They are potentially a powerful instrument for creating change and improving existing services. As research highlights, innovation often happens due to financial pressures.⁴

SIBs take the 'Justice Reinvestment' (JR) approach one step further. JR is a data driven approach widely used in the US for reducing corrections spending, reinvesting savings in strategies that can decrease crime and strengthen communities. SIBs can create real savings for the Ministry of Justice through reduced re-offending, and these savings can be reinvested in preventative action to reduce further crime and improve the system as a whole. Social Impact Bonds present an exciting opportunity in the UK to end the cycle of offending, help reduce the prison population and prevent the waste of human

potential. If implemented properly they could even halt and reverse the trend of hyperincarceration.

Yet SIBs are unlikely immediately to be able to meet all of the expectations being placed on them, and there are risks and challenges for all associated parties. This paper seeks to outline the case for adopting SIBs in a criminal justice framework, highlighting the merits and potential of rehabilitative and preventative programmes, while outlining the advantages and challenges of SIBs.

Why Social Impact Bonds?

Despite high levels of spending, increasing availability of alternatives to custody and a reduction in offending, the UK prison population rose from 20,000 in the 1900's, to over 40,000 in the mid 1990's and then only took another 15 years to double again. The 21st century saw this figure surpass 80,000 for the first time. Infamous political rhetoric underpinned this rise in the population, from Michael Howard's notorious claim that 'prison works,' to Tony Blair's New Labour pledge 'tough on crime, tough on the causes of crime.'

Yet many questioned whether building more prisons is the key to reducing criminal activity and reoffending. Despite Lord Carter's 2007 Prison Report recommendations to secure the long term availability of prison places, and build up to three new 'Titan' prisons,⁵ past rhetoric has began to change. Justice Secretary Kenneth Clarke has signalled a departure from the 'prison works' orthodoxy,⁶ and the coalition government has committed to introducing a 'rehabilitation revolution' and fostering a system with greater involvement of the private and voluntary sectors in rehabilitating offenders. Endorsing SIBs, such a system would pay independent

2. <http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

3. Ministry of Justice, Spending Review Press Notice 2010, available http://www.hm-treasury.gov.uk/spend_sr2010_press.htm

4. Audit Commission (2007) *Seeing the Light: innovation in public services*, London, Audit Commission.

5. Lord Carter, *Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*, 2007.

6. <http://www.guardian.co.uk/society/2010/jun/30/kenneth-clarke-prison-sentencing-reform>

providers to reduce re-offending from the new savings that the approach would generate within the CJS.⁷

However, Social Impact Bonds are not applicable in every area where there is pressing social need. We have identified the following 7 essential criteria for a SIB:

1. The intervention is preventative
2. The area is one of high social need
3. There is evidence of efficacy
4. The impact is measureable
5. The approach aligns incentives
6. Savings generated are greater than costs
7. The government prefers a SIB in that particular setting

The first criterion states that an intervention funded by a SIB must view prevention as key as well as seeking to prevent re-offending by those leaving prison. Funding for preventative programmes is often lacking — helping former offenders is not necessarily emotionally appealing and the public hold the belief that prison is there to punish. Public spending, particularly in the current climate is likely to go to other priority areas.

Secondly, the intervention must be applied in an area of high social need. The prison population stands at 85,276⁸ and is set to increase to up to 95,000 by 2015.⁹ Those in prison have compounded social needs and many have experience a lifetime of social exclusion.¹⁰ Prison is expensive, and despite its aims of rehabilitation and deterrence, two thirds of ex-prisoners reoffend within 2 years of release, and often become trapped in a cycle of offending.

There is no easy solution to prevent reoffending, yet literature highlighting effective interventions has become increasingly developed over the past 30 years. A recent study collating a number of rehabilitative reviews shows strong results across many interventions, stating *'The volume of research and the consistency of the findings of the systematic reviews make this [the efficacy of rehabilitation] a sufficiently sound general conclusion, bordering on 'beyond a reasonable doubt' to provide a basis for correctional practice and policy'*.¹¹ Similarly, a meta-analysis conducted by Illescas et al¹² considered over 2,000 individual studies taken from America and

Europe on the effects of rehabilitation on re-offending. Overall, the average reduction on offending was 20 per cent, with no study showing an effect less than 10 per cent.

The benefits of programmes for ex-offenders can also be found in the UK. For example the St Giles Through the Gates programme offers former offenders who have served a sentence of at least one year a support service addressing the 7 pathways to reducing re-offending. They are met at the prison gates and given housing, benefit, education, employment and training support and can be referred to specialist services. Independent analysis has demonstrated that those who have been through the programme have a re-offending rate 40 per cent lower than the national average — only 15 per cent re-offend after 12 months of release.¹³

For a SIB to be work, it must be possible to measure the impact of the intervention.

Data on reoffending and sentencing outcomes are held by the Police National Computer. As most reoffending occurs in the first two years after release, and is typically measured at one and two years, there is sufficient and reliable data to highlight whether the intervention has met its aims.

SIBs should also act to align the incentives of the contracted parties. Although the financial

burden of prison, courts and probation fall to the Ministry of Justice via NOMS, the charitable sector is equipped to provide support services to reduce re-offending at a relatively low cost, but does not always reap the benefits of doing so. A SIB would realign these incentives encouraging greater preventive action, as not only would the funder receive their original investment on successful completion of the work, they would also get a return on their investment. Central Government would save money from reduced offending, and charitable sectors investments would be repaid.

Importantly, the savings generated for the government stakeholder must be greater than the cost of the intervention. A 2002 estimate put of re-offending by ex-prisoners put it at some £11bn a year, however, using a SIB to fund an intervention package can generate substantial savings, greater than the cost of

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priority areas.

7. http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

8. Prison Population and Accommodation Briefing, Ministry of Justice — 15th October 2010.

9. Prison Population Projections, 2009-2015 England and Wales, Ministry of Justice Statistical Bulletin, available <http://www.justice.gov.uk/stats-prison-population-projections-2009-2015.pdf>

10. Social Exclusion Unit (2002), Reducing re-offending by ex-prisoners, London: Social Exclusion Unit.

11. Lipsey and Cullen (2007), The effectiveness of correctional rehabilitation: a review of systematic reviews, Annual Review of Law and Social Science, Volume 3.

12. Illescas, S., Sanchez Meca, J., & Genoves, V. (2001). Treatment of offenders and recidivism: Assessment of the effectiveness of programmes applied in Europe. Psychology in Spain, 5 (1), 47-62.

13. St Giles Through the Gates, an analysis of economic impact, December 2009, Pro Bono Economics & Frontier Economics.

commissioning. The Young Foundation has estimated is that for a cost of £1,500 per person a range of interventions could be applied to effect a 10 per cent improvement in re-offending performance on sentencing rates. This could generate real and cashable savings of the order of £2,300 per person to the Ministry of Justice, more than sufficient to pay back the original investment plus interest.¹⁴

Lastly, there must be government preference for a SIB. The Coalition Government is committed to a 'Rehabilitation Revolution' that would fund up-front preventative activities designed to reduce later offending rates. They are committed to payment by results, and it is hoped that within a range of those mechanisms SIBs can have a central place.¹⁵

Kenneth Clarke commented,

*This Government has a historic opportunity to initiate a more constructive approach to rehabilitation. This means making prisons places of punishment, but also of education, hard work and change. As part of our radical approach to rehabilitation we are considering a range of payment by results schemes like the Social Impact Bond. The voluntary and private sectors will be crucial to our success and we want to make far better use of their enthusiasm and expertise to get offenders away from the revolving door of crime and prison.*¹⁶

The first SIB has been piloted in a private prison in Peterborough. The pilot will last 6 years, and aims to prepare 3,000 short term prisoners (who do not receive statutory probation support) for their lives post imprisonment. Support for former offenders is provided by St Giles, Ormiston Trust and others, and if re-offending is reduced by an agreed amount, the MOJ will repay the original investment plus an additional return, based on the savings created — generated from a reduction in prison places, courts costs and associated police and probation costs.

Modelling SIBs for Criminal Justice: from theory to cashable savings

Below is a worked example of how an intervention costing £1,500 per person resulting in a reduction of re-

offending of some 10 per cent could release cashable savings, from a reduction in custodial and non custodial sentences, for the Ministry of Justice.

The basic cost model assumes that court and legal costs per case average is around £2,900; the annual cost of incarceration is £39,000; and the cost of a non-custodial sentence is around £4,300. The expected length of time served in custody (where applicable) is calculated from the average sentence served by an offender, and the expected length of future custody spells.

The next step is to estimate the effect of a 10 per cent improvement in reoffending performance on sentencing rates. We estimate a baseline two year reoffending rate in the target group of some 61 per cent, with an associated 41 per cent reincarceration rate. A 10 per cent improvement in performance sees the reoffending rate drop to 56 per cent, and reincarceration rates drop to 37 per cent.

A further factor is the extent to which offending severity may reduce as a result of the intervention. We have modelled an impact equal to half the reduction in sentencing rates for custodial sentences.

A final issue is the extent to which potential savings can actually be achieved — there are many fixed costs associated with prisons. A conservative estimate is to assume that only 60 per cent is cashable.

Our calculations suggest that the average saving per person through reduced numbers of custody days and court appearances is of the order of £2,300. This sum is more than enough to pay back the original investment of £1,500, plus annual rate of return of 7.5 per cent, plus a margin for the Ministry of Justice.¹⁷

Advantages of SIBs

The case for SIBs in the field of criminal justice is strong — they offer much potential for increasing the magnitude and quality of investment available to reduce re-offending. Crucially, SIBs are able to save money even at a time of intense pressure on public resources. Further to the outlined case for SIBs in criminal justice, there are other advantages of SIBs.

14. For a detailed analysis of savings to the MOJ see Chapter 4 — Modelling SIBs for Criminal Justice.

15. http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

16. MOJ News Release, 'Minister launches social impact bond pilot'.

17. For a full cost modelling of SIBs and criminal justice, see Mulgan et al, 'Social impact investment, the opportunity and challenge of Social Impact Bonds' (2010).

SIBs act to correct poor incentives. In many fields of public policy, incentives are poorly aligned, with those who have the ability to improve social outcomes lacking the structural incentives to act. For example, Local Authorities responsible for providing services to young people that divert them away from crime do not share the savings from reduced prison numbers. Similarly, charities that have the potential to implement programmes which aim to reduce re-offending do not reap the benefits of reduced costs for the Ministry of Justice. SIBs can function to align activities in a systematic way.

SIBs also offer the potential to unlock new funding. Maintaining funding in the realm of criminal justice is often difficult, and where funding is available it may be diverted towards more emotionally appealing areas, such as homelessness. Equally, political considerations make it difficult for Government to spend money in certain areas. Prisoners, young offenders, and drug users are disadvantaged in this way and these very categories impose the greatest costs on society. Against the current backdrop of public sector cuts, crime prevention activities are likely to be even more difficult to fund. The SIB framework offers a potential way of funding these activities — those with the knowledge and confidence in criminal justice rehabilitation are able to seek investment, with investors able to seek repayment of up-front capital with an additional return.

SIBs put evidence at the heart of the process, strengthening the evidence base for ‘what works’ — and what does not work. Studies mentioned above highlight that preventative and rehabilitative programmes can and do reduce re-offending. SIBs allow programmes which work well to be scaled up, in turn generating future savings for the Ministry of Justice and society.

Importantly, SIBs offer genuine risk transfer — risk is transferred from the Government to the investor. If a scheme fails to demonstrate the agreed results the government is not compelled to pay out. Conversely, governmentally funded preventative work carries a risk as if it fails the government effectively pays twice — for the failed preventative work and prison costs. This genuine risk transfer has both financial and political advantages for the government.

SIBs are also advantageous for charitable foundations who are likely to be attracted to investments that go beyond traditional grant making by providing a return. The funds invested by the charitable investor can be reused on projects year after year, rather than being a

one-off spend. This enables investors to support more projects and for a longer time period. Many foundations do give funding for preventative programmes without the possibility of repayment, but SIBs offer the opportunity for repayment to be issued, with an additional return on investment. This creates the ability to leverage existing charitable giving, where promising ideas had previously been held back by a lack of finance.

For the commercial investor, SIBs are a new opportunity to seek returns. They allow private funders to access new sources of investment return that have not previously been available, while supporting work that improves social well being.

For the delivery agent, SIBs also provide a level of certainty that their activities will be funded over a long period of time providing continuity to staff and clients. SIBs are a systematic structure whereby delivery organisations can achieve consistent goals and predictable funding. SIBs also encourage greater investment in evaluation of impact — an issue that delivery agencies (especially in the voluntary sector) often find difficult to resource sufficiently.

Prisoners, young offenders, and drug users are disadvantaged in this way and these very categories impose the greatest costs on society.

Overcoming the Challenges of SIBs

Despite the significant potential benefits of SIBs, there are also significant challenges. SIBs are largely an untested concept, however, most challenges can be managed and avoided if properly considered when the SIB is being developed and the programmes designed. The challenges centre around the risks of SIBs.

Primarily, SIBs bring with them an execution risk — if the intervention does not reach its desired effects then the funder will not get their original investment back. The risks to funders in terms of not achieving results must be manageable, providing confidence that the interventions are likely to achieve the desired results. No matter how promising an idea seems, or how good the pilot data, the history of social interventions shows that medium scale implementation is a significant risk, and there is rarely a strong evidence base providing cast-iron confidence that a particular set of interventions will work in a particular place and context. This is particularly true in the case of criminal justice — no two offenders’ needs are the same, and what works in one prison may not work in another.

To manage this risk, SIB partners should ensure a strong business case supports the proposed SIB. The terms of the contract between funders and those delivering and paying out on the SIB should be

transparent, potentially including loopholes to incorporate continuous learning and programme development into delivery.

Secondly, there are challenges surrounding how to measure an intervention's impact fairly. Funders and Government must be confident that the metric used in a SIB has no systematic bias and that the impact is statistically significant (the intervention must have been applied to a suitably large cohort and the effects are not down to chance). Robust measurement requires that there is a clear link to the desired outcome, shared assumptions on costs, conservative and defensible forecasts and an allowance for second order effects (which occur when the intervention has effects on the wider system with implications for cost savings and social outcomes).

Where the SIB's intervention is the primary intervention working with particular groups (for example those who have served short term sentences and do not receive statutory support upon release) the link to improved outcomes is clear. Where the SIB intervention affects people who already participating in a range of interventions (for example those who have served a sentence of over one year and will receive probationary post release support) the link is more problematic to calculate.

To manage this risk, SIB partners should ensure the business case identifies the range of interventions currently being undertaken within SIB target groups; consider including existing services as part of the SIB in a consortia approach; and use a control group with similarly high levels of existing interventions to compare with the group involved in the SIB, thus comparing the impact the SIB has in addition to existing interventions.

Lastly there are challenges in relation to the basis risk of SIBs. Achieving 'real' savings for government stakeholders can be difficult as existing structures may not allow savings to be counted as genuine savings or the specific government stakeholder may not benefit from the saving (e.g. if the saving is returned to general government revenue).

In particular, the minimum change required for a genuine saving is difficult to pin point. For example, when one individual no longer claims welfare benefits the government makes a saving, but to save on prison costs a whole wing/prison may have to close before government achieves cashable savings. To manage this risk, SIB partners can ensure the process of making savings is clearly agreed at the beginning of the SIB; and/or reconsider the scale of the SIB is the impact will be insufficient to achieve actual savings for government.

Diffuse benefits can also be an issue. Although the vast majority of savings will accrue to the Ministry of Justice, reducing re-offending will generate savings in other areas. It may prove challenging to collaborate across local and central Government to address the question of where the multiple benefits fall. For example, less reoffending has large direct savings for the Ministry of Justice, while other departments may make quantifiable but small benefits across health, education and housing that are difficult to quantify and pool together. To manage this risk, SIB partners can attempt to create more place integrated programs in local areas; and/or tailor the SIB interventions to achieve sufficiently high savings for one particular government stakeholder to pay out on the SIB.

A final challenge for SIBs will be ensuring that SIBs don't displace existing spending and interventions. This is particularly challenging where there are overlaps with existing public provision where funders could simply cut their current spending by an amount proportionate to new money raised via a SIB. To manage this risk, partners can include existing providers in the SIB rather than bypass them, and/or reach agreement with existing providers to maintain current level of spending or programme delivery.

Conclusion

SIBs are an innovative financial tool which can be adopted to revolutionise the way preventative programmes are funded, allowing the government to achieve 'more for less' from public services. The government already views SIBs as one of the many tools for investing in and achieving social outcomes, particularly in the field of criminal justice.

SIBs present the opportunity to invest widely in preventative projects to reduce re-offending, in turn saving central government money and improving the life and prospects of offenders and ultimately public safety. If implemented properly, they could halt the trend of hyperincarceration, reduce the prison population and stem the cycle of re-offending.

They are being actively considered or developed over many social policy areas, and tested in many parts of the world, including the USA, Australia and across Europe. Their advantages are clear and appealing, however, at this stage taking into account their lack of application, it is hoped that SIBs will under-promise and over-deliver. Their implementation and execution is likely to be complex, but these barriers which can be overcome with piloting and experimentation.

Prison Reform on the Cheap

Hans Toch is Distinguished Professor Emeritus at University at Albany, State University of New York, USA.

Tony Cameron is a prominent Scottish prison administrator who has served multiple terms as president of the International Corrections and Prison Association. Several months ago Mr. Cameron wrote a challenging editorial in the ICPA's journal *Advancing Corrections*, which begins with the following assessment of world-wide prospects for prison reform:

The current economic crisis is of a magnitude that many reading this article will not have experienced in their lifetime ... What is fair to say — without fear of contradiction — is that ... the field of corrections will feel the impact more than most other areas of social policy ... It is all very well to suggest that we can make economies and savings in what we do but the reality is that for several decades in most of the Western World we have already been operating our prisons and community corrections operations against a backcloth of increasing prisoner numbers and reduced budgets. The consequence is that there is little scope for further cost savings and economies ... Perhaps what we have ahead of us is an opportunity to rethink and to influence the way our business operates and in particular how politicians and public view the use of imprisonment.¹

Mr. Cameron sensibly suggested that the time may be ripe for a recalibration of prison sentences so as 'to make less use of imprisonment for many who currently find themselves in the 'prison net,' and to make more use of community sanctions and treatment programs.' Such a move has intuitive merit, and might be very attractive for tapped-out governments, though it might not be quite as enticing for tapped-out municipalities that would be docked for the 'community sanctions and resources' that Cameron alludes to. The prospect might be even less enticing to many members of the general public, who subsist on a steady diet of lurid headlines about violent crime — even when crime rates go down across the board.

Fortunately, the question of how one can reduce prison populations against these discouraging odds is

outside the purview of my self-assigned mission. I had resolved to think about prison reform, and prisons do not control their intake populations. Nor do prisons exercise a great deal of influence over the duration of inmates' confinement, which tends to be heavily pre-specified or circumscribed by stingy parole boards.

The availability of prison space has also not noticeably affected prison populations. At one juncture, decades ago, prison-moratorium-advocates operated under the presumption that to the extent that we stopped building prisons, fewer offenders would be sentenced and sent to prisons.² This supposition rested on the notion of some sort of built-in homeostatic process in the criminal justice system whereby prosecutors, judges and parole agencies would respond to the availability or non-availability of prison space. Prosecutors, judges and parole board, however, had never claimed to take prison space into account, and the theory was eventually buried with full academic honors when it became obvious that even with a frantic, last-minute construction boom prisoners could end up being obscenely stacked like sardines — multiply-bunked in over-stuffed cells and hallways and gymnasias — and that 'prison capacity' specifications had come to be regarded as a joke.

Having to Make Do

In one sense prisons have had to be adaptable beyond the point of human adaptability. In thinking about this fact I recall once saying that a prison is like my stomach, which has to do the best it can with the inexcusable mess that I feed it. In the case of prisons, the indigestibility can easily rise to crisis proportions. One contributing factor is the inhospitality of the prison environment to many vulnerable sub-populations we are sentencing to prison — Mr. Cameron pointed out in his editorial that prisons have become wholesale repositories of substance abusers and have also come to function as mental-hospital-equivalents. But the crisis has come about because any of the problems experienced by prisoners tends to be exacerbated by overcrowding.

In its current (2010-2011) Session, the US Supreme Court will have to ponder the Indigestibility Question when it reviews an appeal from a decision by a U. S. District Court in California.³ In this decision the district

1. Cameron, T. (2010) 'A Time of crisis or an opportunity for change?' in *Advancing Corrections*, Spring, p. 2.

2. The most eloquent exposition of the perspective was offered in a Quaker-sponsored symposium entitled 'Struggle for Justice,' but the view permeated many introductory criminology and criminal-justice texts of the period.

3. *oleman vs. Schwarzenegger*, 2010WL 99000 (E.D. Cal).

court mandated a reduction of the State's prison population, based on 'clear and convincing evidence that crowding is the primary cause of the constitutional inadequacies in the delivery of medical and mental health care to California inmates and that no relief other than a 'prison release order' ... is capable or remedying these constitutional deficiencies.' The 'relief' the court was alluding to was an earlier intervention mandating improvements in health care, which the State had refused to fund.

The original (district) court held that California's prison population could be reduced to specified levels⁴ 'without creating an adverse impact on public safety or the operation of the criminal justice system.' The State of California disagreed with this contention, and voiced concerns about enormous increments in crime and the prohibitive expense of controlling crime. With respect to costs, the district court had already conceded that California counties might 'need additional financial resources in order to fund the additional costs of ongoing rehabilitation, re-entry, drug or alcohol, educational and job-training programs.' The court pointed out, however, that releasing the prisoners could save a great deal of money.

The District Court ended its order by explaining that it had been forced to intervene by the State's recalcitrance and continued failure to remedy prison conditions. The court wrote that

As we have repeatedly stated, we do not intervene lightly in the State's management of its prisons. However, the State's long-standing failure to provide constitutionally adequate medical and mental-health care to its prison inmates has necessitated our actions, and our prison population reduction Order is the least intrusive remedy for the Constitutional violations at issue (p. 7).

The court made its long-term frustration obvious when it referred in its decision to the State's 'long-

standing failure.' However, the court sounded an apologetic note ('least intrusive remedy,') that reflected its awareness of the fragility of its position. The court's decision was about to undergo review by a Supreme Court that is not known for endorsing brave and noble interventions based on expansive readings of strictures or generous interpretations of narrowly-gauged exceptions.⁵

Penny-Wisdom and Pound-Foolishness

On the judicial front — in the U. S., at least — prisons could expect little help with the crisis situations they were experiencing, and American State governments had already made it clear that they are being forced to curtail popular programs and services while facing tax-payer revolts. Prison administrators have thus come to realize that the prospects of anyone coming to their rescue range from dismal to nonexistent. Their response to this realization has been the campaign to engage in 'cost savings and economies' that Cameron alluded to.

Most of the initial efforts to save and economize were panic-driven, and many were counter-productive. Some decisions almost appeared designed to invite public ridicule. Thus, in 2003, *Newsweek* reported that 'Last week in California some inmates in three prisons were put on 'fiscally-driven lockdowns' because staffing levels were so low. Some states have even resorted to feeding inmates less ... Texas has reduced the daily calorie intake for prisoners from 2,700 to 2,500.'⁶ The Texas system concurrently announced that 'inmates now are being supplied with a roll of toilet paper once every 2 weeks as opposed to 1 roll a week' and that the paper 'was not [of] the soft and cuddly content that one would find at the supermarket.'⁷

One of the more popular categories of 'economy' moves in the United States was to assess inmates newly-invented fees, such as charges for prisoner visits to the infirmary and medical procedures including diagnostic tests, and substantial surcharges for

Most of the initial efforts to save and economize were panic-driven, and many were counter-productive.

4. The specified level was a population cap of 137.5 per cent of prison capacity. This fell appreciably short of the population levels of several California prisons, which bordered on 200 per cent of their rated capacity.
5. Strictures were deliberately embodied by the U. S. Congress in legislation ironically entitled the Prison Litigation Reform Act (PLRA,) a law designed to discourage court-mandated correctional interventions that are not narrowly tailored to achieve circumscribed objectives. In summarizing oral arguments before the Supreme Court relating to the California case, *The New York Times* thus indicated that 'most of the justices seemed convinced that conditions in California's prisons are so awful that they violate the [U. S.] Constitution . But it was not clear that the majority was ready to endorse an order ... to reduce the prison population by as much as 45,000 over two years, to address what (the court in California) called longstanding constitutional violations in medical and mental health services.' (Liptak, A. [2010] 'Justices hear arguments on California prison crowding' in *New York Times*, December 1).
6. Tyre, P. (2003) 'Nickel-and dimed: How states keep prison costs down.' *Newsweek*, June 23.
7. *Huntsville Item* (2003) March 20.

telephone calls to family members. These punitive moves were undertaken with limited concern for their adverse repercussions, or for the obvious fact that they were targeted at a captive impecunious population.

One reality prison administrators have been facing in trying to reduce expenses is that prisons are labor-intensive enterprises, but that they present severe limits to the savings that can be effectuated through staff reductions. Down-sizing the custody staff of a prison, for example, almost always results in overtime costs that exceed the economies that can be attained. Other — less tangible — costs are high stress levels among overworked officers, and appreciably higher stress levels among prisoners who have to deal with the stressed officers.

De-Escalating Custodial Overkill

Fortunately, much can be accomplished through staff redeployment, reallocation and retraining. The most promising of the staff-related interventions is the least obvious one: It involves curtailing the use of segregation settings, which look like they ought to be cheap to operate (since they offer no programs,) but which tend to be inordinately expensive. A high priority ought to be assigned to inventorying and reviewing the recourse to punitive and administrative confinement — and especially, the confinement of perpetrators who have committed other-than-violent infractions.⁸

An obvious first step would be to reserve segregation terms for offenses that have demonstrably occurred, rather than hypothetical acts that someone assumes could take place in the future because an inmate has a shady past, runs with the wrong crowd, or has an antagonistic attitude. It would be particularly nice if prison staff were to occasionally remind themselves that their charges have been imprisoned as punishment, and not *for* punishment — and certainly not to be routinely placed in quasi-dungeons for technical violations of penny-ante rules. A meaningful

appeals process is also essential for procedural fairness, and 'meaningful' ought not to include incestuous administrative self-reviews. Due process should not be routinely ending at the prison gate.

A de-escalation of punitive and administrative segregation would not only decrease the expense of imprisonment but recapture a measure of trust among inmates who feel that they are treated unfairly. Such a de-escalation would also reduce the prevalence of mental illness among prisoners, because mental health problems in prisons are reliably precipitated or exacerbated by periods of solitary confinement.⁹ Lastly, the curtailment of super-high-custody settings would make correction officers available for different types of assignments, and these assignments could be less stultifying than patrolling segregation tiers. It is well to recall in this connection that 'segregation units can become places that damage both staff and prisoners.'¹⁰

Maximizing Human Resources

For prisons to be improved without the infusion of *financial* resources, we must undertake the imaginatively-enhanced deployment of existing (and therefore, inexpensive) *human* resources. What such a move comes down to is that we have to enlist and include our correction

officers, prisoners, and citizen-volunteers in the running and improving of prisons. This approach may be difficult for some persons to envisage because they have learned to define the denizens of prison in stereotypic terms — they are mostly used to casting prison inmates as unregenerate hoodlums, officers (and their unions) as hopeless reactionaries, and community members as zealots. To conceive of prisoners, officers and volunteers as credible change agents, we would have to stop conceiving of them — as most of us now *reflexively* conceive of them — as impediments to reform and impervious targets of change.

Admittedly, a change in perspective would have to occur at the receiving end as well, and the requisite

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8. A very successful effort at such a review was recently reported by Terry Kupers and his colleagues, in a report that was accurately subtitled an 'experience rethinking prison classification and creating alternative mental health programs.' (Kupers, T. et al (2009) 'Beyond supermax administrative segregation' in *Criminal Justice and Behavior*, 36, 1037-1050.)

9. Haney, C. (2009) 'The social psychology of isolation: Why solitary confinement is psychologically harmful' in *Prison Service Journal*, # 181, 12-20.

10. Fenwick, S. and Bennett, J. (2009) 'Issues for staff working in segregation' in *Prison Service Journal*, # 181, 26-28, p. 28.

readjustment could be especially difficult for self-selected spokespersons for officers and inmates. These spokespersons include officers and inmates who make themselves available to some of the media. The officers and their rusty collections of home-made weapons, and the heavily-tattooed 'gang leaders,' have spent considerable effort on practiced routines (such as stale war stories) in which they caricature each other and themselves, and project presumptively photogenic images of hyper-manly obduracy and intractable recalcitrance. The routines may be entertaining in a gruesome sort of way, and they are ego-enhancing for everyone involved. There is special payoff for the TV producers, who can highlight their intrepidity and that of their reporters and interviewers. As for the inmates, they look impressively extra-tough, while the officers acquire heroic stature as they describe laying their lives on the line. Unfortunately, the result of the enterprise is that it discourages outsiders from working with prisoners and prison staff members, which constitutes a serious impediment to getting things done.

Nurturing a Mini-Culture

There is of course no need to initiate change by tackling the most inhospitable persons to work with. Change is most effectively accomplished by recruiting individuals who feel that they can achieve their own purposes and goals, and further their own personal development, through participation in the change efforts. In appealing to prison officers, for example, one would want to target officers who feel that they would like to spend their time doing variegated, meaningful and interesting work. One would not start a program by enlisting officers who like to play cops and robbers, or want to put in eight (or seven) hours a day with the least possible expenditure of effort. Along the same lines, one would not start recruiting prisoners by approaching inmates who are happily inclined to vegetate in their cells.

In other words, one would postulate that

1. *In initiating prison reform activities, the participants one would enlist would be volunteers — prisoners and staff members*

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who feel attracted to the proposed activities, and anticipate that they can personally develop through their participation.

The immediate order of business would be to reinforce one's change program by protecting participants from the predictable pressures that tend to originate from within the surrounding (staff and inmate) culture. At the inception of reform, persons who become involved risk being rejected by peers who are wedded to fashionably obdurate posturing and game-playing. As noted by Crawley and Crawley 'an officer's willingness to work ... in regimes which espouse values contrary to traditional occupational norms may expose him/herself to hostility and ridicule from others and to claims that this is not 'proper' prison work.'¹¹ To counter possible feelings of estrangement, a program must rapidly turn to building its own culture.

As one means of doing so,

2. *Periodic convocations must be organized in which program participants can discuss their experiences in the program, digest what they have learned, and exchange information and advice.*

Periodic convocations of program participants not only serve to cement their loyalty and reinforce their commitment, but can be crucial developmental experiences. In conventional (non-cheap) professional programs, 'training' consists of top-down academic lectures, the content of which is at best only remotely applicable to the needs of trainees. Learning that takes place 'on the job,' however, is usually more effective because it starts by being more relevant. 'Academic' content can always be provided if participants feel the need for concepts or general knowledge to help them make sense of their experiences.

In other words,

3. *The organizational structure of reform efforts ought to be democratic, not primarily because the mode of organization is 'cheap,' but because the*

11. Crawley, E. and Crawley, P. (2008) 'Understanding prison officers: Culture, cohesion and conflict,' in Bennett, J., Crewe, B. and Wahidin (eds) *Understanding Prison Staff*, Willan Publishing, 134-152, p.146.

peer-centered process can be enriching, in the sense that cross-fertilization contributes to staff development and prisoner rehabilitation. Insofar as possible, both officers and prisoners should thus function in paraprofessional capacities.

Job enrichment for prison officers requires that they transcend conventional custodial responsibilities — it means that officers ought to feel free to work closely with prisoners under their supervision — to coordinate their activities, monitor their work, assess their progress, and assist them with their problems. In comprehensive reform efforts, officers would be expected to work collaboratively with prisoners in groups to complete change-related tasks.

Prisoner-participants in reform-related ventures would be expected to work on projects that are useful but also afford learning experiences. Such projects can include making contributions to the quality of life of the prison or providing assistance to fellow-prisoners or persons outside the prison who suffer from some disability, have remediable deficits or are otherwise in need. Projects could also be rehabilitative, in the sense of addressing a re-entry problem shared by members of the group. (Formal rehabilitative endeavors tend to require the inclusion of professionals as members of the group, but they can function as team members or consultants):

4. *High priority among program objectives should be assigned to activities that make a contribution to the prison environment. But priority should also be assigned to tasks that benefit the environment outside the prison and any activities that can make the prisoner-participants feel socially useful.*¹²

In the past, non-profit organizations have supported activities of prisoners that furthered specific socially-useful objectives, such as preparing materials for the blind or training lovable (and promising) puppies to serve as guide dogs. There are no doubt various types of charitable enterprises that could benefit from

There are no doubt various types of charitable enterprises that could benefit from prisoner participation, and that in return might provide training, equipment and resources, and material support.

prisoner participation, and that in return might provide training, equipment and resources, and material support. Among sponsored activities that prisoners ought to especially welcome are any that allow for the acquisition of skills or that yield tangible results that can serve as evidence to the prisoners that they have made positive contributions that make up for past transgressions.

Change-oriented reform ought to be based on a comprehensive inventory of the interests and skills of prisoners and staff members. Data on such matters are ritualistically collected at prison intake in the course of inmate classification. These could provide a starting point, as could background information that is languishing in the personnel folders of officers. Skill- and interest-profiles ought to be brought up to date through interviews (which ought to be conducted by fellow-prisoners and officers), and the information should be relied on in considering tailor-made assignments and activities.

As an outcome of the process,

- (5). *Prisoners and officers would have been mobilized to fill in for professionals that the prison could no longer afford, and would supplement the work of the remaining professionals by functioning as aides or as trainees. It ought to be possible in many individual instances to design paraprofessional career paths that officers and prisoner could consider.*

The Mobilization of Community Volunteers

It may come as a surprise that there are many persons in the community who think that volunteer work in prisons can be fulfilling and rewarding, and who would expect no compensations for their involvement. Most of these persons are motivated by religious convictions that place a high value on charitable work, inculcate some sense of obligation to societal outcasts, or prize available opportunities to disseminate their beliefs among groups that might benefit from them.

12. The process whereby such activities can contribute to rehabilitation is delineated in Toch, H. (2000) 'Altruistic activity as correctional treatment' in *International Journal of Offender Therapy and Comparative Criminology*, 44, 270-278.

Motives such as charitable impulses can be helpful to reform efforts by providing exemplars that participants can aspire to and emulate. Sectarian missionary work, however, can present a challenge to reformers. Proselytizing — especially, among captive populations in public settings — raises ethical questions, and (in the U.S., at least,) violates legal strictures.¹³

The challenge is to provide volunteer-work in prisons that religiously-motivated volunteers can define as subsumable under their (religiously-framed) mission, but that does not violate the rights of inmates who do not wish to participate in sectarian religious experiences, or those of tax-payers who do not want to fund such experiences. Fortunately, the work of volunteers nowadays is mostly framed as contributing to the rehabilitation of prisoners, and the plausibility of this claim is enhanced by the fact that volunteers (or fellow-members of their churches) often work with prisoners after their release, and facilitate their reentry. To claim rehabilitative goals, however, can be a double-edged sword, because one's activities can invite follow-up studies, which almost invariably yield inconclusive or negative findings.¹⁴

The Whole Nine Yards

There are a number of composite enterprises that combine many of the attributes that I have alluded to, in conveniently packaged form. One of these is the so-called 'TC' or *Therapeutic Community*.¹⁵ A TC is an intervention-modality designed to make the delivery of treatment and rehabilitation programs less professional, and therefore less expensive. (It is obviously even less expensive not to undertake any treatment or rehabilitation program at all — an option that is frequently exercised).

There are different versions of prison TCs,¹⁶ but all TCs converge on the premise that prisoners in groups can act as change agents for each other. All prison TCs also nurture a culture that is different from that of the prison, and assiduously reinforce it. Despite this firewall,

however, prison TCs can provide strong linkages to the outside world because they often replicate counterpart TCs in the community. Such replication permits cross-fertilization through exchange of professional and non-professional staff, and alumnae reunions, with graduates of prison programs returning to prison as trainers, counselors or coordinators.

TCs acquired stature in American prisons during a time when substance abusers were civilly-committed to the prison system. This fact has turned out to be a mixed blessing. Long-term membership in residential TCs has been shown to be effective as a treatment modality for drug addicts, but provisions for long-term living/learning environments in a crowded prison system are difficult to arrange. The usual compromise involves setting up special residential units staffed by trained correction officers from which inmates gravitate to relevant programs, including therapeutic groups.

TCs were often initiated by a core staff with expertise in group process and group dynamics. In the course of events, this expertise tended to be disseminated to other members of the community because the 'therapeutic' process of TCs centered on reviews of personal interactions and relationships that occur in and around the groups. This process can be intense in some TCs, but de-escalated versions of these reviews have often proved helpful elsewhere — especially in settings in which prisoners (and staff members) have had to learn to live and work closely together.

I have not intended to suggest in the above that there are ready-made prescriptions for prison reform, beyond elementary attributes of any decent program, such as innovative and collaborative management, provisions for personal development and the availability of opportunities to make some improvements in the world. What I have tried to imply is that inexpensiveness can be an asset — though not a goal — of reform efforts. Frugality is undoubtedly a virtue, but one would not select '*This Prison Governor was Cheap*' as the inscription on one's tomb stone.

13. Toch, H. and Acker, J. (2006) 'Accommodation, sponsorship and religious activities in prison,' in *Criminal Law Bulletin*, 42, 261-288.

14. Burnside, J. (2005) *My Brother's Keeper: Faith-based Units in Prison*, Willan Publishing.

15. Jones, M. (1953) *The Therapeutic Community: A New Treatment Method in Psychiatry*, New York: Basic Books.

16. Toch, H, ed (1980) *Therapeutic Communities in Corrections*, New York: Praeger.

Focus on Disability

Disability — the next equality challenge?

Claire Cooper, Acting Head of Equalities Group, NOMS.

The Prison Service's work on equality has until recently been primarily focused on race issues, following the racist murder of Zahid Mubarek at HMYOI Feltham in 2000. It was right to focus on this and the improvements made and lessons learned have been huge. Although the challenge to ensure fair outcomes for Black and Minority Ethnic (BME), and particularly Black, prisoners remains there is a growing concern both inside and outside the organisation about the way in which we manage prisoners with disabilities, whether physical, sensory or intellectual impairments.

This, of course, is not a new issue. The Prison Service has strived for well over a decade to ensure appropriate provision for disabled prisoners. The introduction of the Disability Discrimination Act (DDA) 1995¹ made it unlawful to discriminate against people in respect of their disabilities in relation to employment, the provision of goods, facilities and services, education and transport. The DDA defined a disabled person as a person 'who has a physical or mental impairment which has a substantial or long term adverse effect on their ability to carry out normal day to day activities'. The Act also placed a duty on service providers to make 'reasonable adjustments' to ensure equality of access for disabled people by taking steps to remove barriers from disabled people's participation. In response, the Prison Service developed policy to comply with the law — PSO 2855².

Ten years later, the DDA 2005³ introduced a duty on public authorities to promote equality for disabled people. PSO 2855 was amended accordingly and underpinned by an auditable Standard. More recently, the new Equality Act 2010⁴ carries forward the protection provided for disabled people by the Disability Discrimination Acts and the new public sector equality duty — which covers all 'protected characteristics', including disability — comes into force on 6 April 2011. This is reflected in the new

Prison Service Instruction on ensuring equality in service delivery.

As well as ensuring compliance with developments in legislation, the Prison Service has had to respond to increasing scrutiny from external stakeholders and regulators. In 2009, the Chief Inspector of Prisons published a thematic report on disabled prisoners⁵. The Chief Inspector reported that prisons were not yet able fully to discharge their duties under the Disability Discrimination Act. Not only were prisons unaware of the extent of disability amongst the prison population, but also disabled prisoners reported poorer outcomes in almost all areas of prison life. They felt unsafe and said they had less access to activities, and younger disabled prisoners were much more likely than other young prisoners to say that force had been used against them. Examples of very good practice were rare and dependent on committed individual staff.

The Equality and Human Rights Commission (EHRC) has also turned its attention to disability in prisons. A statutory inquiry is taking place into disability-related harassment, at which Michael Spurr recently gave evidence. The EHRC Legal Directorate has written to all high security prisons asking a series of detailed questions about provision for disabled prisoners. And the Commission supported a disabled prisoner and wheelchair user held on remand in bringing a discrimination claim alleging a number of failings under the DDA which was recently settled out of court.

In addition, the Prison Reform Trust's *No One Knows* report⁶ and Lord Bradley's review⁷ highlight the experiences of people with learning difficulties and learning disabilities in the criminal justice system. Both reports concluded that disabled offenders were less able to access facilities in prison and although they quoted areas of good practice, these were not widespread or consistent.

The drivers for action are not only legal and external. We have a moral duty to care for disabled

1. *Disability Discrimination Act 1995.*

2. Prison Service Order 2855. Prisoners with disabilities.

3. *Disability Discrimination Act 2005.*

4. *Equality Act 2010.*

5. Her Majesty's Chief Inspector of Prisons (2009) *Disabled prisoners: A short thematic review on the care and support of prisoners with a disability.*

6. Prison Reform Trust (2008) *No One Knows. Prisoners' Voices: Experiences of the criminal justice system by prisoners with learning disabilities and learning difficulties.*

7. Lord Bradley (2009) *The Bradley Report. Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system.*

prisoners and to meet their specific needs. We also have good business reasons for doing so, as it is the only way that we will be able to help them to reduce their risk of reoffending, and thereby to protect the public.

Of course, it is recognised that providing effectively for disabled prisoners is not always easy, given the age of some establishments and the pressures on accommodation. The dislocation between health and social care can also be a huge barrier to effective provision. However, these cannot be used as excuses and there is a good deal we can, and should, do to improve our treatment and care of disabled prisoners.

What are the issues?

The challenges are varied and numerous. One of the most pressing is to increase the recording of disability information and improve data quality. The Chief Inspector of Prisons thematic review of disabled prisoners found that, of the prisoners surveyed, 15 per cent said that they had a disability. The actual number is likely to be higher than this, as many disabled prisoners are not aware that they have a disability or choose not to say so. However, at the time data taken from LIDS⁸ showed only 5 per cent of prisoners had a disability, with no information being recorded for 85 per cent of prisoners.

Although the national policy includes a mechanism for disability monitoring, and the amount of data collected is growing, it remains likely that there is significant under-recording of disability. This is clearly something that needs to be tackled to ensure we have a more comprehensive picture of the number of prisoners with a disability.

Linked to this is the need to have effective systems for measuring and monitoring outcomes for disabled prisoners. The Prison Service has been widely praised for the introduction of SMART — the tool that enables monitoring of outcomes for BME prisoners. This has been instrumental in providing robust management information that enables senior leaders and staff in the organisation to have a clear understanding of the key areas of disproportionality.

It has to be a goal to have the same level of monitoring and analysis in relation to disability, as well as all other protected characteristics. Of course, we need robust monitoring data first if we are then to proceed to analysing outcomes in terms of access to the regime.

There is also work to do to improve reception and induction processes, not only to ensure that monitoring data is captured and there is an appropriate assessment of the immediate needs of prisoners, but also that the information we provide is readily understandable to all, particularly those with learning disabilities or learning difficulties. There is a real risk that some prisoners spend their first hours and days in custody with no understanding of what is happening to them or how they access the regime. This is particularly distressing for those people who are being received into custody for the first time.

The recent disability discrimination claim referred to above demonstrates the need to continue working towards ensuring that reasonable adjustments are made to accommodation. In addressing the claim, the prison accepted that some limited failure to make reasonable adjustments in accordance with its obligations under the DDA had occurred. These related to failure to make reasonable adjustments to allow

the prisoner independent access to a toilet and bath, for example by installing a ramp in the shower area. Although it is important to recognise the inherent limitations of an ageing estate, this does not mean that more cannot be done to make adaptations to cells, shower areas, classrooms and landings to ensure equality of access for all prisoners.

Care planning, and in particular adequate assessment of need and recording of adjustments made, also needs further attention. Both the Bradley Report and HMCIP thematics on disability and older prisoners⁹ highlight issues around care plans not being completed or not being effectively monitored once in place. More recently, lawyers representing individual prisoners who claim establishments have not provided adequate protection or care to their disabled clients have raised the issue of the lack of

The Chief Inspector of Prisons thematic review of disabled prisoners found that, of the prisoners surveyed, 15 per cent said that they had a disability. The actual number is likely to be higher than this . . .

8. The electronic prisoner record system in use at the time.

9. Her Majesty's Chief Inspector of Prisons (2004) *'No problems — old and quiet': Older prisoners in England and Wales. A thematic review by HM Chief Inspector of Prisons.*

documentation which outlines their needs and the support they require. This does not necessarily mean that no assessment of need has been made or support given but simply that this has not then been noted on the prisoner's record which makes it very difficult for the Service to defend cases in court.

A particularly significant challenge, which is at the core of our business and fundamental to what we do, is to ensure access to interventions, whether that be Offending Behaviour Programmes (OBPs) or the raft of other activities which a prisoner may engage in order to demonstrate reduction in risk and progress through their sentence. The outcome of a recent judicial review case found that NOMS had failed to provide appropriate courses to a learning disabled offender.

This related to an indeterminate sentence prisoner with a four year tariff which expired in 2005. Throughout his sentence planning, participation in OBPs was identified as a key way of demonstrating risk reduction. Although he was progressing, OBPs remained a sentence plan target which he could not meet due to his learning disability. Although the prison arranged one-to-one work, with a view to behavioural risk reduction, the judge held against NOMS because OBPs were both in the sentence plan and considered of significant importance in our policies. The judge found the Secretary of State had unlawfully breached the statutory duty to take steps to ensure practices, policies and procedures do not

discriminate against an intellectually disabled prisoner and to enable him to undertake some type of offending behaviour work. This brought to the fore the importance of designing interventions with the needs of disabled prisoners in mind and ensuring they are delivered in ways or places that mean they are accessible to disabled prisoners.

The self-inflicted death of a young prisoner with learning and physical disabilities, described by staff and prisoners as 'a boy in a man's world', is another indication of what can happen when disabilities are not identified and reasonable adjustments are not made. This young man was very vulnerable, and whilst some staff and prisoners provided support for him, he clearly suffered bullying and exploitation from some other prisoners, and the case was described by the Coroner as one of the most harrowing that he has had to deal with.

These cases highlight the massive impact that learning disabilities have on the ability of those affected to engage and cope with the prison regime. Currently there are no precise figures of the percentage of the prison population likely to have a learning disability but we know that there is likely to be a high level of unidentified need, and this is an area which requires some immediate focused attention.

What action are we taking?

Action at both national and local level is required to tackle the issues described above.

The Prison Service Instruction on equality in service delivery sets out how the requirements of the DDA should be met and mandates a number of actions to ensure compliance. In practice, the effectiveness of the arrangements for managing disability issues varies between establishments, and they are not always integrated with other processes. Some prisons have full-time or equivalent Disability Liaison Officers — sometimes working as part of diversity departments — who are taking forward the work in a very proactive way, often using prisoner representatives to assist. Many have committed staff in other areas, such as education and healthcare who ensure that prisoners receive the care and support that they need.

Examples of good practice include a range of educational interventions for prisoners with learning disabilities and difficulties, the provision of work that is suitable for disabled prisoners in a number of prisons, specific activities for disabled prisoners, for example adapted PE provision, and the involvement of relevant voluntary sector groups in some prisons. However, too many of these examples of good practice around the estate still rely on the efforts of individuals, rather than integrating disability work fully into core business. This is why the new Prison Service Instruction on Residential Services will make it clear that, through their engagement with individual prisoners, it is residential staff that are expected to identify prisoners with any particular needs and to make reasonable adjustments to their daily routine. There will continue to be a role for staff with specialist responsibilities around equalities to provide support and advice, but this is a general

This brought to the fore the importance of designing interventions with the needs of disabled prisoners in mind and ensuring they are delivered in ways or places that mean they are accessible to disabled prisoners.

responsibility for all residential staff to be proactive in identifying prisoners' needs, rather than waiting for the prisoner to disclose a disability.

At a national level, our main programme of activity on equalities issues is set out in our Single Equality Scheme (SES)¹⁰, with the actions on disability equality informed by the findings and recommendations from the various reports mentioned above. Some of the key actions include:

Equalities policy framework — the PSI sets out the framework for the management of all equalities issues in service delivery in prison establishments. This includes the key actions to ensure legal compliance — for example, equality monitoring information on all prisoners must be collected and recorded; there must be an annual programme of equality impact assessments of the issues presenting the greatest risk to delivery of fair services; and Governors must ensure that there are effective systems in place for reporting and responding to incidents of discrimination, harassment and victimisation — but is designed to allow Governors greater flexibility in terms of how they go about delivering the required outcomes, and in particular to encourage better integration of equalities work into core business.

Improving the collection of monitoring data — the replacement of LIDS with NOMIS makes recording easier and data more accessible and amenable to analysis. NOMIS

allows the recording of more detailed disability data on prisoners than was previously possible. Any number of disabilities can be recorded under the personal care needs section of a prisoner record. Staff can select the type of disability from the list provided and add further description if needed.

Prisons will also have the ability to produce a report that enables them to see how many prisoners they have recorded against each type of impairment and any reasonable adjustments made. This should radically improve the information we hold on disabled prisoners, enabling diversion of resources to where there is most need.

Work is also underway to improve the procedures for facilitating disclosure on reception

which will be helpful in increasing the recording of disability and improve monitoring.

Monitoring outcomes — the introduction of NOMIS also makes possible disability monitoring of outcomes. A tool has been developed that allows establishments to monitor outcomes for prisoners and to compare results for disabled prisoners with those for non-disabled prisoners, in a similar way to our well-regarded and highly praised ethnic monitoring tool — SMART. The tool is flexible, allowing users to decide what information to monitor, by which characteristic and, to a degree, for how long.

In future, a more sophisticated monitoring tool, linked directly to NOMIS, will allow us to provide outcome monitoring data for establishments, rather than requiring them to enter it locally. A series of reports on the performance hub will report on different protected characteristics applying the same form of analysis as is used in SMART. This will utilise existing streams of data collection and would have the advantage of providing analysis at local, regional and national levels. These reports are expected to be in place by the end of 2011.

Impact assessments — an integral part of the SES is the Equality Impact Assessment (EIA) process — a systematic appraisal of the effects of a function, policy or practice on different groups of people. It involves the collection of relevant monitoring data and other evidence and consultation with stakeholders (including prisoners) with the aim of discovering any adverse impact on any group and putting in place measures to address it.

All Headquarters policies are subject to an EIA. In establishments, subjects for EIA are prioritised according to local need using a risk assessment process which includes the consideration of disability issues and the involvement of disabled prisoners. An on-line tool — NEAT — guides staff through this process, along with a DVD to train staff in the use of the tool.

These arrangements will drive much of the improvement, bringing changes to national policies

NOMIS allows the recording of more detailed disability data on prisoners than was previously possible. Any number of disabilities can be recorded under the personal care needs section of a prisoner record.

10. National Offender Management Service (2009) *Promoting Equality in Prisons and Probation: The National Offender Management Service Single Equality Scheme 2009-2012*.

where appropriate and facilitating the proactive identification and tackling of issues at a local level.

Reasonable adjustments — a guide to reasonable adjustments in prison has been issued, including explanations of common disabilities and conditions, examples of good practice in making adjustments for them and contact details for government and third sector organisations which can advise and support staff.

Establishment information — a comprehensive survey of all establishments has been undertaken with the aim of collecting information on the services and facilities available to disabled prisoners. This includes access to premises; accessible accommodation and facilities; regime activities such as visits, education, work, and religious services; and the availability of adapted interventions such as offending behaviour courses. This has been compiled into a database which enables us to better understand provision for disabled prisoners across the estate; assists regions in developing resources locally as well as more specialised facilities; and to advise where improvements are needed.

Access to offending behaviour programmes — we have embarked on a programme of work to assess the accessibility of our various programmes and to devise adjustments or alternatives as necessary. A review of existing OBPs and the way in which they are delivered is taking place and an adapted version of the Sex Offenders Treatment Programme for prisoners with low IQs is already available. Interim sentence planning guidance for staff working with prisoners with a learning disability or difficulty has been issued to Probation Chief Executives and relevant Offender Management leads. A briefing note was also sent to Directors of Offender Management providing guidance on issues surrounding learning and other disabilities and areas of concern for consideration in the offender management process.

Learning disability — much of the work which is currently underway involves partnership working between NOMS, prisons and Offender Health. This is especially the case around issues for prisoners with

learning disabilities — arguably one of the most pressing challenges for the Prison Service.

Improving Health, Supporting Justice: A delivery plan is the cross-government response to Lord Bradley's report¹¹. Key deliverables in the plan include training of frontline staff; screening for learning disabilities; and support to resettlement into the community on release. Progress has been made already in the training of frontline staff, including the development of a module on learning disabilities and other hidden disabilities in the training for new entrant prison officers. Offender Health has also rolled out a one day training course on learning disability awareness to key prison staff.

One of the most significant projects is the development and application of a screening tool for learning disabilities — a key recommendation in the Bradley Report which was carried through into the Delivery Plan.

One of the most significant projects is the development and application of a screening tool for learning disabilities — a key recommendation in the Bradley Report which was carried through into the Delivery Plan. The Learning Disability Screening Questionnaire (LDSQ) is a short tool consisting of a number of questions which can be asked of a prisoner which will give a reliable indication of whether the individual is likely to have a learning disability. Any member of staff can apply the questionnaire — it does not require a learning disability specialist. The prisoner has to give his/her permission to the test, and to the results of the test being shared. Those prisoners identified as being

likely to have a learning disability should then be referred to healthcare and education, and wing staff informed that the individual will need additional support. The information will also be fed into sentence plans. The tool has been piloted at a number of prisons and is currently being trialled in courts and prison custody suites. Early indications are that the tool is producing results comparable to those from a far more complex tool and the aim is to implement the use of the screening tool across the estate. This will include a plan for training on both the use of the tool itself and training on communication and management skills for prison service staff.

In addition, in partnership with Offender Health and Surrey Primary Care Trust, work is underway to

11. Department of Health (2009) *Improving Health, Supporting Justice: The National Delivery Plan of the Health and Criminal Justice Programme Board*.

translate some of the key information for prisoners into an 'easy read' format. This includes a basic induction handbook covering what happens when you first arrive; everyday life and required routines; education; and health screening and services. Factsheets will also be available on issues such as how to make a complaint; understanding the adjudications process; and how to progress through the incentives and earned privileges scheme. The policies to be translated were selected by staff and prisoners from across the estate and reviewed by a learning disability user group which acts as a consultation forum for Offender Health. Work is expected to be completed by the end of June 2011.

Conclusion

There can be no doubt that the issues described above represent significant challenges that NOMS and prisons must tackle in order to ensure we are effectively meeting the needs of disabled prisoners and facilitating equality of access. The wider context of the Spending Review and the need to make substantial savings at local and national levels means

that it is increasingly important and necessary to think creatively about how to meet these challenges.

In addition, as the government's 'rehabilitation revolution' gets underway, the experience of disabled prisoners must not be forgotten. In particular, in implementing the concept of 'working prisons' — where prisoners are obliged to work a full working week — as set out in the recently published Green Paper¹², care must be taken to ensure that this does not disadvantage disabled prisoners who may face barriers to their participation.

Despite the challenges ahead and considerable work that remains to be done, there is greater awareness of the issues and a greater willingness to tackle the problems that prisons and prisoners face. NOMS is committed to providing a fair service to all and with support from prisons and third sector organisations, we can continue to address any inequalities and ensure that disabled prisoners are able to benefit from their experience of prison and resettle successfully into the community. It is not only our legal obligation but the only way to deliver an effective service that achieves our core aim of preventing victims by changing lives.

12. Ministry of Justice (2010). *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.

The care and support of prisoners with a disability:

An Inspectorate review

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Introduction

The Disability Discrimination Act (DDA) was amended in 2005 to include all the activities of the public sector. Therefore, NOMS, like other public sector services, acquired duties under the DDA (2005) in December 2006. The DDA requires NOMS to promote disability equality and eliminate unlawful discrimination against people with disabilities.

Under the Act, a person with a disability is defined as having a physical, sensory or mental impairment which has a long-term and substantial effect on their ability to carry out normal day-to-day activities. This definition covers a range of impairments including:

- ❑ Physical and motor impairments
- ❑ Progressive conditions
- ❑ Visual impairments
- ❑ Mental impairments
- ❑ Deafness and hearing impairments
- ❑ Learning disabilities and difficulties
- ❑ Speech and language impairments
- ❑ Disfigurement

In the general population it is estimated that 20 per cent of the adult population are disabled¹. Prisoners are well documented as having poorer mental and physical health than the general population² which would potentially suggest a higher proportion of people with a disability within the prison population. The Office for National Statistics (1998) survey reported that 90 per cent of prisoners had at least one psychiatric diagnosis, although this figure is inflated as it includes substance use³. A review of research findings by the Prison Reform Trust estimated that for a prison population of 80,000 there are likely to be more than 5,500 prisoners with an IQ of less than 70 and between

16-20,000 with IQs between 70 and 79⁴. Older prisoners are the fastest growing age group within the prison population⁵. Although not exclusive to older people, some disabilities, such as mobility, visual or hearing impairments are more prevalent in this age group.

In 2009 HMI Prisons published a thematic review 'Disabled prisoners' on the care and support of adult prisoners with a disability⁶. The findings came from three sources⁷:

- ❑ A survey of all disability liaison officers (DLOs) at adult prisons. Eighty-two surveys were returned, a response rate of 64 per cent.
- ❑ Findings from 44 full inspection reports.
- ❑ Responses from 5,793 prisoners surveyed at 68 prisons. The responses of prisoners who said they considered themselves to have a disability were compared with the responses from those who said they did not⁸.

Although the review found pockets of good practice across the prison estate, often due to the commitment of individual staff, overall the findings were not encouraging and identified a number of issues in meeting the needs of prisoners with a disability. Recent inspection reports have likewise reported some positive work and show a development in the consideration of disability and work to try meet the needs of prisoners with a disability. However, across the estate many of the concerns outlined below and the recommendations made in the report still hold true.

Identification

The accurate identification of prisoners with a disability is an important first step to ensure that their needs are met while in custody. In our prisoner survey, 15 per cent of prisoners said that they considered

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1. Prime Minister's Strategy Unit (2005). Improving the life chances of disabled people.
 2. For example: Social Exclusion Unit. (2002). Reducing re-offending by ex-prisoners.
 3. Singleton, N., Meltzer, H., Gatward, R., Coid, J., & Deasy, D. (1998). Psychiatric Morbidity among Prisoners in England and Wales.
 4. Talbot, J. (2007). No One Knows. Identifying and supporting prisoners with learning difficulties and learning disabilities: The views of prison staff.
 5. Prison Reform Trust. (2008). Doing time, the experiences and needs of older people in prison.
 6. HM Inspectorate of Prisons. (2009). Disabled prisoners: a short thematic review on the care and support of prisoners with a disability.
 7. Inspection reports and prisoner survey analysis covered the period September 2006 to April 2008. The DLO survey was conducted in August 2008.
 8. Only statistically significant differences are cited in the article.

themselves to have a disability. As prisoner surveys are representative of the prison population sampled, this can be seen as an estimate of the proportion of prisoners with a disability across the estate, although this varied by functional type (see Table 1) and by individual prisons. However, as this is self-report data and therefore reliant on prisoners knowing that they have a disability and being willing to report it, this figure is likely to be an underestimation of the true proportion.

Table 1:
Responses to the question ‘Do you consider yourself to have a disability?’ by functional type

Functional type	Yes	No	Overall
Local prisons	302 (17%)	1,522 (83%)	1,824
Training prisons	317 (15%)	1,821 (85%)	2,138
High security prisons	59 (23%)	193 (77%)	252
Open prisons	31 (10%)	290 (90%)	321
Young offender institutions	86 (11%)	695 (89%)	781
Women’s prisons	69 (14%)	408 (86%)	477
OVERALL	864 (15%)	4,929 (85%)	5,793

In contrast, in August 2008 only 5 per cent of prisoners were recorded on LIDS⁹ as having a disability which was much lower than what our prisoner survey and other research would suggest. Although the data had the caveats that there had been issues extracting data from LIDS and it was also based on self-report, the most concerning part was that for 85 per cent of prisoners there was no entry recorded. This was despite the recording options of ‘no disability’ and ‘refused to disclose’, which prisoners are entitled to do. At best this represents poor recording, but it suggested that there were prisoners with a disability who had not been identified and whose needs were not being met.

In the survey, most (98 per cent) DLOs said that prisoners were assessed for a physical, mental and/or sensory disability on arrival to a prison and this was supported by inspection findings. How assessments were conducted varied across prisons and included assessments by health services, reception or induction staff or prisoners self completing a questionnaire. However, inspections raised concerns about the timing and quality of initial assessments to encourage full disclosure. For learning disabilities or difficulties,

although 87 per cent of DLOs reported that prisoners were assessed, usually by health services or education staff, it was not clear whether this involved self disclosure or an actual assessment.

Procedures to disclose a disability after the reception and induction process were far less developed and were often reliant on prisoners or staff knowing who to contact. This is an issue for prisoners who wish to disclose a disability at a later point, or those who learn of, or develop a disability after entering custody. In the 2007 HMP Maidstone inspection report¹⁰ it was noted that the DLO had conducted a survey with the prison population to identify ‘hidden’ disabilities, as well as developing a reception questionnaire, and this had increased the number of prisoners identified as having a disability from 12 to 113.

Induction and prison information

Induction is an important process for prisoners on first arrival to custody or to a new prison. Fewer prisoners who considered themselves to have a disability said that they had attended induction in their first week at their current prison and of those who had, less than half felt that it had covered everything they needed to know. Although some DLOs reported that induction material was provided in a range of formats such as Braille, in audio form, using British Sign Language, or that induction talks had been adapted for those with learning disabilities or difficulties, this was not widespread.

Positively, at some prisons DLOs said they attended induction to introduce themselves and to explain their role and the support available for those with disabilities. Disappointingly no DLOs mentioned in their survey responses the information book for prisoners with a disability produced by the Prison Reform Trust. This provides important information for disabled prisoners, including information on their rights and entitlements, general information about prison life and the contact details of useful organisations, and is also available in audio form.

In addition to the induction process, it is important that prison information and notices are in a format that can be understood by, and that meets the needs of, prisoners with a disability. Again, this was underdeveloped across the prison estate. At the HMP 2007 Maidstone inspection¹¹ the DLO and diversity manager were looking at exchanging words for symbols on a range of signs around the prison to

9.

The electronic prisoner record system in place at that time.

10.

HM Inspectorate of Prisons. (2007). Report on an announced inspection of HMP Maidstone 19-23 February 2007 by HM Chief Inspector of Prisons.

11.

HM Inspectorate of Prisons. (2007). Report on an announced inspection of HMP Maidstone 19-23 February 2007 by HM Chief Inspector of Prisons.

support those with learning or literacy difficulties. There was also an audio CD that provided information about the complaints system.

Support

Prisoners who considered themselves to have a disability were less likely to report feeling safe on their first night than those who said they did not — 70 per cent compared with 81 per cent. They were also more likely to report problems on arrival to prison in a range of areas including health needs and feeling depressed, although, perhaps reflecting this, they were more likely to report having been offered help by staff. However, DLOS reported limited tailored support for those with disabilities during their first few days in custody. Instead support matched that offered to all prisoners and included wing or peer support and the induction process.

It is important that staff who are involved in the day to day care of a prisoner know if they have a disability so that they are aware of a prisoner's specific needs. Only half of DLOs said that there were procedures for them to pass information on to appropriate staff and only two thirds said that there were formal procedures for staff to pass on appropriate information to them.

Although rare, there were still examples where health services would not share information with relevant staff despite the guidance in Prison Service Instruction 25/2002 *'The protection and use of confidential health information in prisons and inter-agency information sharing'*.

Almost two-thirds of DLOs reported that prisoners with a disability had a care plan, although this was sometimes only for severe or complex cases or referred to plans used by health services staff that only covered their health needs. The Inspectorate expects all prisoners identified as having a disability to have a care plan that sets out how their individual needs will be met, which should be created with the individual's involvement.

Funding of social care in prison can be a barrier to meeting the needs of prisoners with a disability and promoting independent living. Often the PCT or prison were having to meet the cost rather than the responsible commissioner. Half of DLOs reported links

with outside agencies to provide aids or seek advice. Although DLOs reported the use of a range of aids to help meet individual needs, several felt that greater availability of aids and links with outside agencies would improve provision for those with a disability.

Inspections have raised concerns about other prisoners acting as unofficial carers. This review, as well as the *'Older prisoners in England and Wales'*¹² follow-up review recommended that there should be formal prisoner carer schemes with training, support and pay for the carer. This would ensure that the necessary safeguards were in place. Without a formal scheme carers are susceptible to injury and those cared for are open to poor care or bullying. There has been some

debate about the appropriateness of an official prisoner carer scheme with a training qualification. This is similar to the difficulties faced in the development of the Listener scheme, which were overcome. DLOs reported that there were official carers at 17 prisons and at 12 carers were paid for their role.

At HMP Wakefield the DLO reported a good assessment and support process for prisoners with a disability. All prisoners who declared a disability had an initial assessment. Information was shared with relevant staff and entered in their wing history sheet, wing disability folder and disability/elderly team care files.

An offender carer was allocated if necessary and outside agencies, including social services, were contacted to provide aids and advice.

It is also important that release plans ensure continuity of support and care for prisoners with a disability on release, including any social care needs. In the prisoner survey, those who considered themselves to have a disability were more likely to report potential problems on release than those who did not and were less likely to know who to contact for help with these. This included finding accommodation, continuing education or finding employment and accessing health services.

Accommodation and access to regime

Even with reasonable adjustments, not all prisons are able to accommodate prisoners with all types of disability or enable full access to the regime. PSI 31/2008 *'Allocation of prisoners with disabilities'*

It is important that staff who are involved in the day to day care of a prisoner know if they have a disability so that they are aware of a prisoner's specific needs.

12. HM Inspectorate of Prisons. (2008). *Older prisoners in England and Wales: A follow-up to the 2004 thematic review.*

provides guidance on what actions should be taken to ensure that prisoners with a disability are suitably accommodated, have full access to the regime and can progress throughout their sentence in the same way they would if they did not have a disability. However, inspection reports noted instances of overly restrictive medical exemption criteria at some prisons. Our *'Women in prison'*¹³ review highlighted that neither of the two open women's prisons, Askham Grange and East Sutton Park, could accommodate women with severe mobility impairments.

Two-thirds of DLOs reported that there were dedicated cells for those with disabilities at their prison. This matched findings from a 2008 survey of NOMS accommodation by the Safer Custody and Offender Policy Group that reported no adapted cells at a third of prisons. The NOMS survey found that there were 431 fully adapted cells and 108 partially adapted cells across the prison estate although half of these were located in healthcare centres. The Inspectorate expects prisoners only to be held in healthcare if they have a clinical need and not solely because they have a disability.

All prisoners who require assistance to evacuate in an emergency should have a personal emergency and evacuation plan (PEEP). However, some inspections raised concerns about the implementation of the plan, particularly in ensuring that staff who did not normally work on a wing were able to identify those who would need help in an emergency.

Inspection reports highlighted that some prisons struggled to provide suitable access to showers for those with mobility or physical impairments either because there were no adaptations in shower areas or showers were located upstairs. Although not included in the thematic review, the 2008 HMP Parkhurst inspection report¹⁴ contained two extremely concerning examples of prisoners being unable to access showers. One prisoner with a longstanding health problem and mobility needs told us he had not had a shower in over a year as he was extremely unsteady on his feet and the showers were on an upper floor. Another prisoner in a

wheelchair said he had not had a bath since he was discharged from hospital almost six months previously.

Prisoners who considered themselves to have a disability reported less access to activities than those who did not. This included access to work, education, vocational skills training, the library, gym, outside exercise and association. Inspection report findings supported this, with prisons struggling to provide full access to the prison regime. In the survey, several DLOs felt that the age and structure of some prisons impacted on their ability to meet the needs of prisoners with motor, physical or visual impairments.

However, there were some positive examples of tailored activities being run: at some prisons gym staff offered tailored gym sessions for older prisoners or those with mobility or physical impairments. At HMP Swaleside the DLO reported that a deaf prisoner had been able to complete a sentence plan course with the aid of a signing assistant.

Management

All DLOs reported that there was a disability policy or a diversity policy that included disability at their prison but less than half were based on a recent needs assessment of the population. Three quarters of DLOs said that disability was routinely discussed at a dedicated meeting. A policy and committee meeting are important in order to

provide strategic direction, guidance and management of work to meet the needs of prisoners with a disability.

All prisons should have a designated DLO who will work towards ensuring that the prison complies with the DDA to meet the needs of prisoners with a disability. However, only 12 per cent of DLOs felt that they had enough time to 'completely' fulfil their role whereas two fifths (41 per cent) said 'not at all'. For those in a full-time post this had made a positive difference to their ability to fulfil their role. Likewise inspection reports also frequently recommended the need for DLOs to be given more or profiled time for their role and a clear job description. Less than half (46 per cent) of DLOs reported that there were prisoner representatives to support them in their work.

Inspection reports highlighted that some prisons struggled to provide suitable access to showers for those with mobility or physical impairments either because there were no adaptations in shower areas or showers were located upstairs.

13. HM Inspectorate of Prisons. (2010). *Women in prison: a short thematic review*.

14. HM Inspectorate of Prisons. (2009). Report on an unannounced full follow-up inspection of HMP Parkhurst 8-12 December 2008 by HM Chief Inspector of Prisons.

Table 2 shows the extent to which DLOs felt able to meet the needs of prisoners with different types of disabilities. Although about two thirds of DLOs felt able to 'somewhat' meet the needs of prisoners with different disabilities, about a fifth felt unable to. Concerns raised by DLOs varied by the type of disability but included a lack of aids, the age and structure of buildings and the need for greater involvement of community agencies. In terms of mental health, some DLOs had marked 'not at all' as a reflection of the scale of the problem. The main concern in meeting the needs of those with learning disabilities or difficulties was their initial identification. These types of disability were primarily viewed as the responsibility of health services and education respectively.

Table 2: DLO ratings for how capable they felt of meeting the needs of prisoners with disabilities			
Type of disability	Not at all	Somewhat	Completely
Physical or motor impairment	20% (16)	64% (51)	16% (13)
Visual impairment	23% (18)	63% (50)	15% (12)
Hearing impairment	11% (9)	70% (56)	19% (15)
Mental impairment	26% (20)	63% (49)	12% (9)
Learning disabilities/difficulties	16% (13)	63% (50)	21% (17)

DLOs were asked what the main frustrations in fulfilling their role were. The top four mentioned were the need for more training, allocated time, funding and support. These were also the top improvements DLOs felt were required to enable the needs of prisoners with a disability. Although the role covers legislation, only 11 per cent of DLOs said that they had received formal training for their role. This was also an issue for all prison staff with only two thirds (63 per cent) of DLOs reporting that disability awareness training was available for staff, although the extensiveness of the training and how specific it was to disability varied. At the time of the review there were plans to roll out awareness training on learning disabilities and difficulties, with training initially focused on the DLO, a member of the health services team and a member of the induction team.

Monitoring

There should be monitoring to ensure that prisoners with a disability have equivalent treatment

and are not victimised, with action taken to address any inequalities. However, monitoring was limited or non-existent. Access to activities, complaints and victimisation were only monitored in a few prisons.

As discussed above, prisoners who considered themselves to have a disability were less likely to report access to activities than those who did not. They also reported a worse experience with the applications and complaints process and were more likely to report safety concerns. Half said they had felt unsafe at some point, around a third reported having been victimised by other prisoners and/or staff and more reported having been physically restrained by staff, particularly at Young Offender institutions. Despite this only a few DLOs reported links to violence reduction or safer custody meetings and only a third said that there were diversity incident reporting forms which included reporting of victimisation due to disability.

Recent Developments and Future Prospects

There has been a recent change in legislation. The Equality Act 2010 came into effect in October 2010 and replaced the DDA 1995 and 2005. It collated all anti-discrimination laws into a single Act but also included some changes to how discrimination should be prevented and addressed. For disability it included a change to the definition so that a person no longer needs to show that it affects a particular capacity such as hearing or mobility. It also included an extension and changes to the types of discrimination covered. It legislated that reasonable adjustments were to be made when there would be '*substantial disadvantage*'¹⁵ to a person with a disability. Previously reasonable adjustments were required when it would be '*impossible or unreasonably difficult*'¹⁶ for a disabled person to use the service, so this change is likely to mean that more reasonable adjustments will need to be made.

Although it is almost two years since the publication of '*Disabled prisoners*' recent inspection findings, despite a shift in the right direction, paint a similar picture. As the review found, there are examples of positive practice across the estate due to dedicated and enthusiastic staff. Positively there is a greater focus on disability and work to meet the needs of prisoners with a disability is gradually improving. However, looking across the prison estate the findings and recommendations made in the review are still reflective of current practice and there is still some way to go to ensure that the needs of prisoners with a disability are met. The Inspectorate's review and other relevant publications can help

15. Government Equalities Office and Equality and Diversity Forum. (2010). Equality Act 2010: What do I need to know? Disability quick start guide. Pp. 7.

16. Ibid. Pp. 7.

provide some guidance and direction, but it is prison staff that will be undertaking and developing this work and need to be given the time, training and support to do so. However, in the current financial

climate there are fears that even current levels of dedicated staff and time will not be maintained, both of which are vital to ensure that work in this area can be continued and improved.

Other publications

It is hoped that the Inspectorate's review helped provide some direction for DLOs, through its findings and the 26 recommendations made. There have also been several other publications which make recommendations or provide useful guidance for staff involved in meeting the needs of prisoners with disabilities. These include:

- ❑ The Nacro research report *'Meeting the needs of women with disabilities'*¹⁷ conducted for the Women and Young People's Group. The key findings supported those of the Inspectorate's review. It highlighted DLOs who required training and support, the need for staff awareness training, problems meeting the needs of women with disabilities due to the physical environment and the need for a formal buddies/carers scheme with training and support.
- ❑ *'Lord Bradley's review of people with mental health needs or learning disabilities in the Criminal Justice System'*¹⁸. This made several recommendations which included the need to include screening for learning disabilities in reception screens, improved primary mental health services and mental health and learning disability awareness training for all prison officers.
- ❑ The Care Services Improvement Partnership guidance *'Positive Practice Positive Outcomes: A Handbook for Professionals in the Criminal Justice System working with Offenders with Learning Disabilities'*¹⁹. This provides information for staff including what a learning disability is and current legislation, as well as practical advice, such as how to communicate with people with a learning disability.
- ❑ The *'Prisoners Voices'*²⁰ report by the PRT, as part of their No One Knows report series, looked at the experiences of those with learning disabilities or difficulties within the CJS and included several recommendations. Check lists for action, including one specifically for prisons, were provided in the appendices to help staff ensure that those with learning disabilities are identified and their needs met.
- ❑ Within NOMS, PSO 2855 *'Prisoners with disabilities'* and PSI *'Allocation of prisoners with disabilities'* both provide guidance to prisons on how the requirements of the DDA can be met. Since the Inspectorate's review the NOMS Single Equality Scheme 2009-12²¹ has been published which includes disability. Action points include ensuring the involvement of disabled prisoners and other stakeholders and the introduction of screening for learning disabilities. In 2010 NOMS produced further helpful guidance on reasonable adjustments. This sets out what is meant by a reasonable adjustment, covers issues of location and access and provides examples of reasonable adjustments by types of disability. It also gives information on the most frequently encountered disabilities and conditions and contacts of organisations that can provide advice and support.

17. Ford, J. (2009). Meeting the needs of women with disabilities: A short research project undertaken by Nacro for Women and Young People's Group.

18. Lord Bradley. (2009). The Bradley Report: Lord Bradley's review of people with mental health needs or learning disabilities in the Criminal Justice System.

19. Care Services Improvement Partnership. (2007). Positive practice positive outcomes: A handbook for professionals in the Criminal Justice System working with offenders with learning disabilities.

20. Talbot, J. (2008). No One Knows. Prisoners voices: Experiences of the Criminal Justice System by prisoners with learning disabilities and difficulties.

21. National Offender Management Service. (2009). Promoting equality in prisons and probation: The National Offender Management Service Single Equality Scheme 2009-2012.

There have also been some publications and initiatives to help meet the needs of older prisoners. Although not specifically about disabled prisoners due to the higher prevalence of some types of disability within this age group there is some overlap. These include:

- ❑ The Nacro resource and workshop pack, funded by the Department of Health. The resource pack includes information on common illnesses among older prisoners, good practice ideas and information and advice. The workshop pack provides advice on how to use the resource pack and also materials for staff to run awareness workshop sessions in their prison. Age Concern²² has also produced a staff resource pack for the high secure estate.
- ❑ The PRT *'Doing Time'*²³ publication which reports on the experiences of older people in

prison. There is also a good practice guide²⁴ which reports on findings from a prison staff survey.

- ❑ The Older People in Prison Forum, set up by Age Concern and the Prison Reform Trust, aims to increase the understanding of older prisoners' issues. Membership includes third sector organisations, academics and government departments.
- ❑ The Older Prisoners Action Group, led by offender health with third sector and government department membership has an ongoing work programme to address the health and social care issues for older prisoners. As part of this work, it has collated the recommendations from various reports, including the Inspectorate's reviews, and will be looking at how to take the health and social care recommendations forward.

22. Age Concern and Help the Aged are now Age UK.

23. Prison Reform Trust. (2008). *Doing time, the experiences and needs of older people in prison*.

24. Prison Reform Trust. (2010). *Doing time. Good practice with older people in prison — the views of prison staff*.

Prisoners with learning disabilities and learning difficulties

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Introduction

In 1999, a prison governor writing in the *Prison Service Journal*, said:

We... have a young offender who is due for release shortly... Everyone working with this woman accepts that she should not be in prison. She is severely learning disabled as a result of a physical abnormality of the brain... We know that regardless of court diversion schemes, many like her slip through the net... Perhaps the courts think such people are insolent when they don't reply. In fact, when we had one of these women assessed we discovered that she had a mental age of between seven and eight.

Seven years later, concerned at the on-going plight of people with learning disabilities in the criminal justice system, the Prison Reform Trust embarked on a three-year programme to draw attention to the particular experiences of people with learning disabilities and difficulties who offend, and the staff who work with them. The programme, entitled *No One Knows*, was supported by The Diana, Princess of Wales Memorial Fund and chaired by former prisons minister, Baroness Joyce Quin. One of the first pieces of work undertaken was a survey of prison staff to find out how prisoners with learning disabilities and difficulties were identified and supported, and staff from over half of the prison estate in England and Wales took part. Results showed that there was no routine or systematic procedure for identifying prisoners with learning disabilities, that information accompanying people into prison was unlikely to show if they had a learning disability, and most prison staff said they were not confident that their prison had the skills and expertise to support prisoners with learning disabilities¹. Talking about some of the difficulties faced by such prisoners, one member of staff said:

We have no specialist resources, so having failed at school they fail here again. The most profoundly affected should not be in prison as it's akin to locking up a five year old and has no effect on their potential to reoffend. I can think of no more inappropriate place to send such people.

In 2009 Lord Bradley published his review of people with mental health problems or learning disabilities in the criminal justice system², in which he made a number of recommendations. These included the need for improved screening and identification of people with learning disabilities at the point of arrest and, where appropriate, diversion away from the criminal justice system; screening for learning disabilities at reception into prison; improvements in support for prisoners with learning disabilities, and learning disability awareness training for criminal justice staff.

Although progress has been made, there remains much to be done both nationally and within individual prisons. With the coalition government's plans to radically overhaul the criminal justice system, and changes in health and social care, there is an opportunity to build on what works and to replicate good practice as standard practice across the prison estate.

Learning disabilities and learning difficulties — what do we mean?

A learning disability is defined by the World Health Organisation as a 'reduced level of intellectual functioning resulting in diminished ability to adapt to the daily demands of the normal social environment'. IQ levels are given as a guide and the range 50-69 suggests mild learning disability³.

Typically, people with learning disabilities and low IQs will have limited language ability, comprehension and communication skills, which might mean they have

1. Talbot, J. (2007) *Identifying and supporting prisoners with learning difficulties and learning disabilities: the views of prison staff*. London: Prison Reform Trust.

2. Department of Health (2009) *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, London: Department of Health.

3. World Health Organisation (1996) *ICD-10 Guide for Mental Retardation*.

difficulty understanding and responding to questions; they are likely to have difficulty recalling information, for example remembering daily prison routines, and take longer to process information. On being questioned, for example at the police station and in court, they may be acquiescent and suggestible and, under pressure, may try to appease other people.

Learning disabilities are largely 'hidden' with few visual or behavioural clues. Many people with a learning disability try hard to hide their impairment due to embarrassment, for fear of ridicule and wanting to appear the same as everyone else.

It is generally recognised that between 5-10 per cent of the adult offending population have learning disabilities, while prevalence rates among children who offend appear to be higher. Studies suggest that 7 per cent of adult prisoners have an IQ below 70, and a further 25 per cent have an IQ between 70-79 (borderline learning disabilities)⁴. An assessment of children who offend in England and Wales found that 23 per cent had an IQ below 70, and 36 per cent had an IQ of 70-79⁵.

Much higher numbers of people in the criminal justice system have learning difficulties. Learning difficulties cover a range of impairments of which dyslexia is the most common. Many people with learning difficulties find aspects of reading and writing hard, and their comprehension and communication skills may be impaired. Communication difficulties are especially common amongst children who offend. Studies suggest that as many as 60 per cent have a communication disability and, of this group, around half have poor or very poor communication skills⁶.

A literature review undertaken by *No One Knows* showed that between 20-30 per cent of offenders have learning disabilities or learning difficulties that interfere with their ability to cope within the criminal justice system⁷.

The terms learning disabilities and learning difficulties are often used interchangeably; in this article they are not.

People with learning disabilities and the criminal justice system

There is disagreement among professionals and practitioners — including police officers, healthcare workers and legal practitioners — about the appropriateness of taking formal action against some people with learning disabilities who are suspected of committing a crime. This, to an extent, reflects a lack of clarity in current policy and guidance on the application of the concept of criminal responsibility to these individuals.

On the one hand, the provision of treatment and support for suspects with learning disabilities, rather than prosecution, may help individuals overcome the problems that led them to (allegedly) offend. On the other hand, failure to arrest and prosecute carries its own risks. For example, the individual who has committed a crime but is not prosecuted may not appreciate the gravity of his actions and may reoffend, and possibly commit more serious offences as a result.

Diversion of certain individuals away from the criminal justice system and into healthcare, and the question of fitness to plead are two important areas currently being addressed.

In his review, Lord Bradley recommended that all police stations and courts should have access to criminal justice liaison and diversion schemes, and the coalition government has made a commitment to take this forward. Such schemes will help to identify whether an individual has a learning disability and, in consultation with local services, will determine the most appropriate course of action. For example, options would include proceeding with a prosecution, with appropriate support, and diversion away from the criminal justice system into healthcare.

The main criteria used in determining fitness to plead date from 1836. There has long been concern about the current test used to determine fitness to plead. In October 2010 the Law Commission launched a consultation, *Unfitness to Plead*, which included

Many people with a learning disability try hard to hide their impairment due to embarrassment, for fear of ridicule and wanting to appear the same as everyone else.

4. Mottram, P.G. (2007) *HMP Liverpool, Styal and Hindley Study Report*. Liverpool: University of Liverpool.
5. Harrington, R. and Bailey, S., with Chitsabesan, P., Kroll, L., Macdonald, W., Sneider, S., Kenning, C., Taylor, G., Byford, S., and Barrett, B. (2005) *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board for England and Wales.
6. Bryan K., Freer J. and Furlong C. (2007) *Language and communication difficulties in juvenile offenders*, International Journal of Language and Communication Disorders, 42, 505-520.
7. Loucks, N. (2007) *Prisoners with learning difficulties and learning disabilities — review of prevalence and associated needs*. London: Prison Reform Trust.

proposals for a new legal test for unfitness to plead. Recommendations from this consultation are expected by summer 2012.

Diversion away from the criminal justice system and the question of an individual's fitness to plead are unlikely to apply to people with learning difficulties, unless there are other concerns, such as mental health problems.

Notwithstanding the above, there are a significant number of people with learning disabilities in prison today — an estimated 6,000 — and many more will have borderline learning disabilities. While some people with learning disabilities, in the future, may be diverted away from the criminal justice system, others will continue to be sentenced to prison.

The experiences of prisoners with learning disabilities and difficulties

The experiences of prisoners with learning disabilities and difficulties were the subject of a report by the Prison Reform Trust, Prisoners' Voices⁸. The report drew on research involving interviews with 173 prisoners from 14 prisons, 154 of who were identified by prison staff as having learning disabilities or learning difficulties. The remaining 19 interviewees did not have learning disabilities or difficulties, and formed a comparison group to illustrate differences between the two

groups. As part of the interview process, interviewees were asked to complete a screening tool to confirm whether they might have learning disabilities.

Interviews with prisoners further reinforced findings from earlier research involving prison staff⁹. These included, for example, limited resources and support for this group of prisoners, difficulties in accessing certain parts of the prison regime and, because of their disabilities, a heightened level of vulnerability within the prison environment.

During interviews prisoners were asked, amongst other things, about their experiences of daily living and what life generally was like for them in prison; what they did during the day; prison rules and discipline, and

the kinds of support that would help them while in prison. Interviewees were also asked about any particular difficulties they had, such as reading prison information and filling in prison forms, understanding what was expected of them, and making themselves understood. Interviewees were further asked to complete a scale that showed levels of anxiety and depression.

A prisoner's ability to 'get on' in prison is predicated on a number of factors, including the ability to understand what is expected of them and to be understood, and the ability to read and write. Results from the learning disability screening tool, completed by prisoners as part of the interview process, showed that over two-thirds experienced difficulties in verbal comprehension skills, including difficulties understanding certain words and in expressing themselves. Over half said they had difficulties making themselves understood in prison, which rose to more than two-thirds for prisoners with learning disabilities.

The consequences of not understanding, and of not being able to make yourself understood can be grave. Some prisoners said they would ignore whatever it was they didn't understand and 'hope it would go away', while others said they would get angry and 'kick off' or 'storm out'. When asked what he would do if he didn't understand something, one prisoner with learning

The consequences of not understanding, and of not being able to make yourself understood can be grave. Some prisoners said they would ignore whatever it was they didn't understand and 'hope it would go away', while others said they would get angry and 'kick off' or 'storm out'.

disabilities said:

I wouldn't do anything really; I'd be too scared to ask, so I'd do nothing.

Talking about her difficulties in making herself understood, one prisoner said:

That happens to me most of the time; I get depressed when people don't understand me so I leave them alone, but then it doesn't get done.

While another said:

8. Talbot, J. (2008) *Prisoners Voices: experiences of the criminal justice system by prisoners with learning disabilities and difficulties*. London: Prison Reform Trust.
9. Talbot (2007) see n.1.

I muddle up words all the time and that causes problems.

Not being able to read and write very well, or at all, caused further difficulties. More than two-thirds of prisoners interviewed had difficulties reading, which rose to four-fifths for those with learning disabilities, and similar numbers had difficulties filling in prison forms. Talking about his inability to read very well, one young offender said:

I can read some things but not others. I skim over the words that I don't know and then it doesn't make sense to me.

While another said:

I take a guess, or I just get on the best I can. They (prison staff) got me to sign something the other day; I didn't know what it said, I just signed it.

Not being able to read and write very well caused particular problems when it came to filling in prison forms. Prisoners described how they missed out on things such as visits and activities because they couldn't fill in prison forms, or had filled them in incorrectly, and some said they got frustrated and angry at not being able to complete them. One woman prisoner said:

I end up not knowing what it's about and that has happened to me before. I ended up with no credits on my phone.

While another prisoner said:

I don't fill in any applications so I don't get anything. Nobody helps me. I get embarrassed asking for help so I don't ask. There's no point.

One prisoner, with learning disabilities, explained how he filled in his meal sheet:

I knew 'a' was sandwiches, so I lived off sandwiches.

Asking for help was not always an option that prisoners felt comfortable with. Reasons given included not knowing who to ask, fear of ridicule, feelings of shame and embarrassment at needing to ask for help, and not wanting to bother other people — whether prison staff or other inmates. A number of prisoners explained that they would ask certain officers for help, but not others, and that while some officers seemed willing to help, others were not. One prisoner said:

Nobody tells you who can help, you've got to find out and because I can't read and write I can't ask anyone and nobody comes.

Against this backdrop, when asked what prison was like for them, it was perhaps not surprising that many prisoners said it was hard, tough, stressful, scary, depressing and lonely.

Results from the anxiety and depression scales showed that prisoners with learning disabilities and difficulties were almost three times as likely as prisoners without such impairments to have clinically significant depression or clinically significant anxiety. Further, over two — fifths of prisoners with learning disabilities and difficulties experienced both depression and anxiety, compared to less than a fifth of prisoners without.

Although most prisoners said they knew what they would do if they felt unwell, fewer than two — thirds of prisoners with learning disabilities said they did, and around a fifth said they would need help to access healthcare. One prisoner with learning disabilities said:

I know you have to fill in a form but I wouldn't know what to put on it.

Prisoners were asked about the things they did during the day, and prisoners with learning disabilities were the most likely to spend time on their own and have fewer things to do. As one prisoner with learning disabilities pointed out:

There's not much I can do.

Prisoners with learning disabilities were less likely to have a job in prison than other prisoners, however

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they were more likely to be attending education (however, this finding may reflect how prisoners involved in the research were identified, which was largely through education staff). Prisoners who didn't attend education gave a number of reasons including finding being in a group difficult, lack of one-to-one support in the classroom and, having tried it, found that it didn't meet their particular needs. One young offender with learning disabilities said:

I haven't been asked if I want to go education; I don't mind going. No one has ever talked to me or assessed me for my ability to do activities.

Around half of prisoners visited the library, although a number said they didn't go because they couldn't read.

Prisoners were asked if they had done any programmes to help them stop offending. Around a third of prisoners with learning disabilities and difficulties said they had, compared to over half of prisoners without such impairments. Prisoners with learning disabilities were the least likely to have done any programmes to help them stop offending. When asked if she would like to do a programme to help her stop offending one prisoner said:

Yes, I would, but I can't read and write; it's very embarrassing. You can't do the courses if you can't read and write.

Another prisoner serving an indeterminate sentence said:

It's hard, hard dealing with the sentence let alone dealing with the stresses of not being able to do the course... and knowing that you'll have to be here longer because you can't read is hard.

Prisoners were asked how they knew about prison rules. Prisoners with learning disabilities and difficulties were less likely to say they knew about prison rules than prisoners without such impairments. The availability of written information and formal briefings didn't necessarily mean that prisoners understood what the rules were. As one woman prisoner explained:

They (prison staff) read the rules out when you first come on to the wing, but I didn't really understand them all, there was too much going on in my head to take it in.

While another prisoner, with learning disabilities, said:

They are in a leaflet, some bits are easy to read and some are rushed.

A number of prisoners said they relied on informal ways to know what the rules were, for example watching what others did, figuring it out for themselves and picking things up as they went along. As one woman prisoner explained:

Sometimes people will tip you off, but they don't tell you much. You're constantly trying to guess what the rules are and trying not to break them.

While others said they learnt by their mistakes, only getting to know about a rule once they had broken it. When asked how he knew about prison rules, one prisoner said:

That's easy! You know about the rules when you break the rules.

Perhaps unsurprisingly, therefore, prisoners with learning disabilities and difficulties were five times as likely to say they had been subject to control and restraint techniques as prisoners without such impairments, and were more than three times as likely to say they had spent time in the segregation unit.

Although most prisoners knew why they were in prison, they didn't all know when their release date was. Prisoners were asked if they knew when they could go home; just under a fifth didn't know because they were either on remand or had indeterminate sentences. Discounting this group around one in ten said they didn't know when they could go home, which more than doubled for those with learning disabilities, almost a quarter of whom said they did not know when they could go home.

Although the experiences of prisoners were, on the whole, grim — and on occasion, shocking — there were a number of examples where seemingly small acts of kindness by prison staff and other inmates made all the difference. Some prisoners said their personal officer provided help, others described how there were certain officers they could 'talk to', and one young offender was especially glowing in his praise of a particular officer:

There is an officer on B3 who I can ask for help, I can't fault him. What a guy! He listens to you.

A number of prisoners described how they had improved their skills while in prison, in particular with reading and writing. One prisoner with learning disabilities said:

Being here has helped with my reading and writing as I do Toe-by-Toe and go to a reading class on a Wednesday.

While others talked positively about activities such as library visits:

I go on a Friday. I can read books now, even though it takes me a long time. My first book took me nearly a year and a half to read.

What prisoners with learning disabilities and difficulties said would help

Prisoners were asked about the kinds of support that might help them while in prison. Ideas ranged from the very practical, such as increasing the size of prison forms and help making phone calls, to specific help with personal problems and difficulties, and more constructive activities that they could take part in.

Almost half said what would help was somebody who they could talk to about personal problems and difficulties. Sometimes prisoners wanted specialist help and support, such as help with dyslexia, while on other occasions it was the opportunity to talk more generally to somebody and be listened to. By way of example one young offender said:

I would like someone to have a sit down and talk with, to tell me what's happening and how to do things.

Some prisoners talked specifically about one to one help, often adding, so that other prisoners wouldn't get to know about their impairments. Some prisoners were clear about support needing to come from somebody unconnected with the prison, while on other occasions prisoners suggested that the person who could help might be a prison officer.

The types of support looked for by prisoners included help with sentence progression, filling in forms, making plans for the future, reading and writing, and staying in touch with family members.

Prisoners said that less time when there was nothing to do and more constructive things to do would help, and those with learning disabilities were the most likely to say this. Time alone, with nothing to do made prisoners feel depressed, frustrated and angry. Several prisoners, in particular young offenders, said more opportunities to learn to read and write would help. One young offender with learning disabilities said:

I would have liked reading and writing classes and I would have liked to have worked. I'm in my cell 23 hours a day.

Some prisoners suggested that they should be asked, on arrival into prison, about their support needs, and for their views on what might help.

Concluding remarks

The Prison Reform Trust's *No One Knows* programme concluded that the criminal justice system does not recognise, let alone meet, the particular needs of people with learning disabilities and difficulties. Consequently, criminal justice agencies, including prisons, are failing in their legal duty to promote disability equality and to eliminate discrimination¹⁰. This is not to say that nothing good ever happens — it does. There are many examples of where prison staff work creatively and hard to

support prisoners with particular needs. However, such examples tend to be ad hoc and reliant upon good and committed staff, rather than any routine and systematic and procedures.

More recently, a number of things have happened. Under the auspices of the Department of Health, every prison in England and Wales has been invited to take part in learning disability awareness training, while for new recruits a module on learning disabilities and difficulties has been included in Prison Officer Entry Level Training. Again, under the auspices of the Department of Health, a learning disability screening tool has been successfully piloted, and around 20 prisons are currently using it to help identify prisoners with a learning disability. It is expected that the screening tool will be made more widely available across the prison estate during 2011.

The Prison Reform Trust's *No One Knows* programme concluded that the criminal justice system does not recognise, let alone meet, the particular needs of people with learning disabilities and difficulties.

10. Talbot (2008) see n.8.

The Bradley report¹¹, gave important recognition to concerns about people with learning disabilities in the criminal justice system, and certain recommendations made by Lord Bradley are being pursued by the Ministry of Justice and the Department of Health. Such recognition is important and helpful for prison staff and others working in prisons, for example health and education staff. Concerns long held about the particular difficulties and support needs of certain prisoners can now be more easily stated and acted upon. For example, in every prison between 5-10 per cent of the population will have learning disabilities; to ensure their support needs are recognised and met individual prisons should have procedures in place to identify such prisoners, and

ensure that prison regimes are largely accessible to them. Accessible regimes for prisoners with learning disabilities will benefit other prisoners too, for example prisoners with learning difficulties, prisoners who find reading and writing difficult, and prisoners whose first language is not English.

It's a big task, but not an impossible one — even in the current climate of austerity. Relatively small changes can make a significant difference to the lives of prisoners with learning disabilities and difficulties, and the staff who work with them. There are a number of good resources available that can help, and the following checklist should provide a helpful start.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Which members of prison staff have undertaken learning disability awareness training? Does any further awareness training need to be arranged? 2. Does your prison have a named disability liaison officer and a named member of the senior management team with responsibility Does your prison have access to a learning disability nurse? 4. Are procedures in place to identify prisoners with a learning disability? 5. Is there a clear referral route for prison staff concerned that an individual prisoner might have learning disabilities or other particular support needs? 6. Are prison forms and prison information published in 'easy read'? Are copies of the prisoner information book and prisoner | <p>information book for prisoners with a disability readily available?</p> <ol style="list-style-type: none"> 7. Does your prison have good links with your local learning disability partnership board? 8. Does your prison education have a qualified special educational needs coordinator and access to a dyslexia specialist? 9. What arrangements are in place to support prisoners with learning disabilities and prisoners who are unable to read and write very well, or at all? 10. Which parts of the prison regime are accessible to prisoners with learning disabilities and which are not? For example, are offending behaviour programmes and work opportunities accessible and, if not, what alternative activities are in place? |
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The following resources are available to download free of charge:

- * *Positive practice, positive outcomes: a handbook for professionals in the criminal justice system working with offenders with learning disabilities*; it is expected that the second edition, revised and updated, will soon be available from the Department of Health.
- * *Mencap's Make it clear: a guide to making easy read information*: www.mencap.org.uk
- * *Autism: a guide for criminal justice professionals*: www.autism.org.uk
- * *Prisoners information book*, available in 'easier read'; *Information book for prisoners with a disability*: www.prisonreformtrust.org.uk/Publications
- * *Prisoners Voices: experiences of the criminal justice system by prisoners with learning disabilities and difficulties*; checklist for prison, pages 95-96: www.prisonreformtrust.org.uk/nok

11 . Department of Health (2009) n.2.

Disabled prisoners and human rights law: the jurisprudence of the European Court of Human Rights and the domestic courts

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Introduction

Imprisonment, by its very nature, causes distress and discomfort to the detainee, but the detention of prisoners with disabilities raises more specific concerns with respect to their mental and physical health. These concerns engage human rights law, as the incarceration of disabled prisoners is capable of impacting on the private life of the prisoner (as guaranteed by article 8 of the European Convention on Human Rights). In addition, imprisonment, and the continued detention, of disabled prisoners might in certain circumstances engage article 3 of the Convention, which prohibits inhuman and degrading treatment and punishment, or in exceptional cases even article 2, which protects the right to life.

This article will examine the potential application of those Convention rights, in particular article 3, to disabled prisoners; and will analyze the relevant case law of both the European Court of Human Rights and the domestic courts with respect to claims made by such prisoners. In this context, 'disabled' prisoners refer to those with mental and physical illnesses, and will include elderly prisoners. The cases will consider the standard of care expected of the prison and government authorities with respect to disabled prisoners who are in their custody, and whether continued detention is compatible with such prisoners' Convention rights, but the article will also consider a recent domestic decision which considers whether the imposition of a custodial sentence on a disabled prisoner is compatible with human rights law.¹ The article will not attempt to cover specific disability discrimination law as it applies to prisoners, but will focus on Convention rights and the case law of the European Court and domestic decisions made under the Human Rights Act 1998.

Challenging general conditions of imprisonment

Article 3 of the European Convention can be employed to challenge the compatibility of general prison conditions with human rights standards.² However the European Court has always attempted to maintain a balance between the rights of the prisoner and issues of public and prison safety in determining whether the conditions were contrary to article 3. Accordingly, the Court has held that it is permissible to consider the dangerousness of the prisoner in determining whether the conditions violate the article,³ and as we shall see this factor, together with the public interest that sentences are served in full, will often be relevant in deciding whether the continued detention of a disabled prisoner breaches the Convention. For example, in *Sanchez v France*,⁴ it was held that there had been no violation of article 3 when a prisoner (Carlos 'The Jackal') had been segregated in prison for over eight years, the majority of the Grand Chamber noting that the prisoner was very dangerous and had shown no remorse for his crimes and thus the hardship of segregation had not crossed the threshold under article 3. Importantly, therefore, only the minority of the Court found that the treatment was contrary to basic minimum standards of human dignity and posed threats to his future mental health despite his dangerousness.⁵ Further, as we shall see in respect of cases brought even by disabled prisoners, the courts must be satisfied that the applicant's treatment goes beyond the inevitable harshness associated with incarceration.

Nevertheless the European Court has been willing to challenge general prison conditions within the standards of article 3, and in *Peers v Greece*,⁶ it held that although there had been no evidence of a positive intention to humiliate or debase the applicant, the fact that the authorities had taken no

1. *R v Qazi* [2010] EWCA Civ 2579.

2. See Foster, Prison Conditions, 'Human Rights and Article 3 ECHR' [2005] PL 33. For a view from the Chief Inspector of Prisons, see Owers, 'Prison Inspection and the Protection of Human Rights' [2004] EHRLR 107.

3. *Krocher and Moller v Switzerland* (1982) 34 DR 24.

4. (2006) 43 EHRR 54.

5. Note, however, the recent admissibility decision of the European Court in *Ahmad and others v United Kingdom* (Application Nos. 24027/07, 11949/08 and 36742/08).

6. Decision of the European Court 19 April 2001.

steps to improve objectively unacceptable conditions denoted a lack of respect for the prisoner and constituted degrading treatment within article 3. Further, although the Court may be sympathetic to the social and economic resources of the member state and thus its prison conditions, it will still find a breach if the conditions do not meet the standards laid down in the Convention.⁷

There has been little leading domestic law in the area of general prison conditions, but the leading authority — a Scottish case — does provide some guidance and was, interestingly, a case brought by a prisoner with a disability. In *Napier v Scottish Ministers*⁸ a remand prisoner complained of inadequate sanitary conditions, which involved ‘slopping out,’ and that he was confined to his cell for excessive periods, relying on a medical report that stated that his eczema condition was unlikely to improve whilst held in such conditions. The Outer Session held that the subjection of the applicant to the conditions existing in that prison at that time, and in particular to the practice of ‘slopping out,’ constituted inhuman and degrading treatment within article 3. Specifically, to detain a person along with another prisoner in a cramped, gloomy and stuffy cell and, to deny him overnight access to a toilet throughout the week and for

extended periods at the weekend and thus to expose him to both elements of the slopping out process, was capable of attaining the minimum level of severity necessary to constitute degrading treatment and thus to infringe article 3. The court also felt that the prisoner’s eczema condition was of crucial importance to the determination of the case. This was because the very presence of the condition was a source of acute embarrassment and a feeling of humiliation causing him a degree of mental stress; moreover, the infected eczema was caused by the conditions of his detention, in particular by the practice of slopping out.

In contrast, the domestic courts have been less willing to interfere where the prisoner is not suffering from a specific ailment or disability. Thus, in *Broom v Secretary of State for the Home Department*,⁹ the court rejected a claim when a prisoner complained that he was subjected to disgusting and unhygienic conditions; one cell had excrement around the toilet and in another the cupboards were soaked in grease from cooking utensils. In rejecting the claim the court stressed that imprisonment itself is humiliating and the circumstances of the present case were no more than the ordinary incidence of a prison regime. The fact that the claimant prisoner has a disability might, therefore, lead to a more robust approach by the courts, European and domestic.

Prisoners with physical and mental disabilities

Having established that the prisoner’s disability might lead the court to more likely find a violation of Convention rights, the article will now examine the extent to which the European and domestic courts have used Convention rights to regulate and challenge the conditions that disabled prisoners may normally be required to endure. In particular it will examine how the courts balance the rights of disabled prisoners with the need for punishment, and the acceptance of the idea that

imprisonment involves an inevitable element of harshness and degradation.

The detention and treatment of prisoners with physical, mental or other disabilities has excited a good deal of debate with respect to the question of whether such persons should be incarcerated in prison, and the appropriate standards of their treatment in prison. In addition to concerns expressed by the European Committee for the Prevention of Torture,¹⁰ there have been a number of decisions of the European Court in respect to the treatment of such detainees, raising issues of the compatibility of their detention and treatment with article 3. The Court’s approach is to look

In particular it will examine how the courts balance the rights of disabled prisoners with the need for punishment, and the acceptance of the idea that imprisonment involves an inevitable element of harshness and degradation.

7. *Poltorastskiy and Others v Ukraine*, decision of the European Court 29 April 2003.

8. *The Times*, 14 May 2004. See Foster, Prison Conditions, Human Rights and Article 3 ECHR [2005] PL 33; Lawson and Mukherjee, Slopping out in Scotland [2004] EHRLR 645.

9. [2002] EWHC 2041.

10. See Murdoch, The Impact of the Council of Europe’s ‘Torture Committee’ and the Evolution of Standard-setting in Relation to Places of Detention [2006] EHRLR 159.

at each case on its merits and in *Grori v Albania*,¹¹ it was held that although there was no general duty to release prisoners suffering from serious illnesses, there was an obligation to ensure that a prisoner received adequate treatment or medication and that this duty was not excused on grounds of expense.¹²

The European Court will certainly take a robust approach where vulnerable prisoners are subjected to harsh conditions of imprisonment and not treated in a manner that is consistent with their physical or mental state. For example, in *Keenan v United Kingdom*,¹³ the European Court held that there had been a violation of article 3 in respect of the manner in which the authorities had treated a mentally ill prisoner known by them to be a suicide risk. In that case the Court found that the lack of effective monitoring of the prisoner's condition and the lack of informed psychiatric input into his assessment and treatment disclosed significant defects in the medical care provided to a mentally ill person with such a risk. That approach was followed in *McGlinchey v United Kingdom*,¹⁴ which concerned the standard of care and treatment of prisoners with drug addiction. In this case the prisoner had a long history of heroin addiction and was asthmatic and began to suffer heroin withdrawal symptoms immediately following her imprisonment. The prisoner died despite the treatment she received at the prison and in hospital and claimed that her treatment violated article 3. The Court confirmed that the state had a duty to ensure that a person was detained in conditions that were compatible with respect for human dignity, including the duty to make proper provision for the prisoner's health and well-being in the form of requisite medical assistance. Although the prisoner's condition had been regularly monitored over one period, during that period she had been vomiting repeatedly and losing a lot of weight. Further, in another period despite

the lack of evidence that her condition had improved she was not seen by a doctor for two days and continued to vomit and lose weight. Subsequently, despite some improvement in her condition, she continued to lose weight and had become dehydrated, which had not only caused her great distress and suffering, but had posed a very serious risk to her health. The Court thus concluded that the prison authorities had failed to comply with their duty to provide her with the requisite medical care and their treatment of her had violated the prohibition against inhuman and degrading treatment contained in article 3.¹⁵

The approach in *Keenan* and *McGlinchey* has also been adopted in cases concerning prisoners with long term or permanent physical disabilities. Thus, in *Price v United Kingdom*,¹⁶ it was held that although there had been no evidence of any positive intention to humiliate the prisoner, the detention of a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or to keep clean without the greatest of difficulty, constituted degrading treatment within article 3. Further, in *Vincent v France*,¹⁷ the Court found a violation of article 3 in respect of

the treatment of a wheelchair bound prisoner who had been detained for four months in a prison which had inadequate facilities to deal with his disability. The Court concluded that the applicant had been totally reliant on the authorities and had lost the ability to leave his cell or move about the prison independently as a wheel had to be removed from his chair every time he entered or left his cell.

The question is, therefore, whether the place of detention is adequately and appropriately sourced to accommodate the prisoner. If this is not the case, then there will be a violation of article 3, despite any

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11. Decision of the European Court, 7 July 2009.

12. See also *Akhmetov v Russia* (Application No. 37463/04), where the refusal to transfer the prisoner to a civilian hospital was held in breach of Article 3.

13. (2001) 33 EHRR 38.

14. (2003) 37 EHRR 41.

15. See more recently, the decision of the European Court in *Taddei v France* (Application No. 36435/07), where it was held that the failure by the prison authorities and the French courts to move an anorexic prisoner to a civilian hospital where she could be treated properly for her condition was in breach of article 3.

16. (2002) 34 EHRR 53; see Foster, *Inhuman and Degrading Prison Conditions* (2001) NLJ 1222.

17. Decision of the European Court 24 October 2006.

practical security reasons for detaining the prisoner in a normal prison. Thus, in *Riveiere v France*,¹⁸ it was held that there had been a violation when the applicant, a long-term prisoner with a psychiatric disorder, had been detained in normal prison conditions without proper facilities for his disorder. In the Court's view he should have been detained in special conditions irrespective of his offence or perceived dangerousness. In contrast, in *Gelfmann v France*,¹⁹ there had been no violation when a prisoner, who had suffered from AIDS for nearly 20 years, had had his request for release on medical grounds refused. The Court stressed that was no general obligation to release a prisoner on health grounds or to transfer him to a civilian hospital, even if suffering from an illness that was difficult to treat, provided the prisoner is receiving *adequate* treatment in prison and his condition was being monitored by an outside hospital.

The decisions in cases such as *Keenan* and *Price* are particularly relevant to the treatment of mentally ill or disabled persons. Although the Court accepts that prison authorities are under an obligation to protect the health and safety of persons deprived of their liberty, thus making the decision relevant to prisoners generally, the disability of the prisoner often makes the Court more willing to rule on the compatibility of prison conditions with basic human rights. However, the Court is not prepared to lay down or prescribe general standards, preferring instead to consider the impact of the conditions on the particular prisoner. Thus, in *Aerts v Belgium*²⁰ it found no violation when a mentally ill prisoner was detained in what the Court conceded were 'unsatisfactory conditions' that were not conducive to his effective treatment. As there was no evidence of a deterioration of the applicant's mental health, it held that the prisoner had not been subjected to inhuman or degrading treatment.

Imposing standard prison practices on disabled prisoners

The Court will also find a violation of article 3 where the authorities have imposed penalties or practices on a disabled prisoner which are inappropriate given that prisoner's needs and status. Thus in *Keenan*, above, the imposition on that prisoner of a serious disciplinary punishment, including the imposition of 28

additional days some nine days before his expected release, was found to have threatened his moral and physical resistance and was not compatible with the standard of treatment required in respect of a mentally ill person. Further, in *Groni v Albania*, above, it found that the segregation of a serious ill prisoner from the outside world and his representatives had the effect of intensifying the mental anxiety a prisoner would feel about his illness and its consequences.

The use of handcuffs for security purposes on prisoners receiving medical treatment has also given rise to issues under article 3. In *R (Graham and Allen) v Secretary of State for Justice*,²¹ the High Court held that the use of handcuffs on prisoners who posed an adequately founded risk of escape was not in breach of article 3 simply because the prisoner was ill, and that initially at least the prison authorities would be left to make the necessary assessment and

balance. In that case it was held that it was not unlawful for the authorities to assess a 73-year-old prisoner serving a life sentence for the murder of his wife and children four years previously, as posing a sufficient risk of escape and of harm to the public during his hospital treatment. Further, there were no health reasons why he should not be restrained. However, it was held that there *had* been a violation of article 3 when another prisoner receiving treatment for Hodgkin's lymphoma while serving a sentence of three years for drug offences had been handcuffed to officers during his medical treatment and placed in handcuffs

The Court stressed that was no general obligation to release a prisoner on health grounds or to transfer him to a civilian hospital, even if suffering from an illness that was difficult to treat, provided the prisoner is receiving *adequate* treatment in prison and his condition was being monitored by an outside hospital.

18. Decision of the European Court 11 July 2006.

19. (2006) 42 EHRR 4.

20. (2000) 29 EHRR 50.

21. [2007] EWHC 2490 (Admin).

during subsequent visits to receive chemotherapy treatment. The court held that because the prisoner was felt to be a serious risk to the public if he escaped, the initial decision to handcuff the prisoner did not violate article 3 (although it came perilously close to doing so). However, when the prison authorities became aware of the full facts of his illness and of the unlikelihood of him escaping, and recommended the removal of the restraints, the subsequent use of handcuffs during further hospital treatment and outpatient visits constituted both degrading and inhuman treatment. Notwithstanding this ruling the courts have subsequently upheld decisions to handcuff such prisoners, provided the medical problems are not so extreme as to outweigh any risk issues.²²

On the other hand, the European Court is prepared to find a breach of article 3 in cases where the prisoner has been deliberately mistreated and the prisoner's age and state of health have exacerbated that situation. Thus, in *Henaf v France*²³ it was held that there had been a violation of article 3 when a 75-year-old prisoner had been handcuffed on his way to hospital to undergo an operation and had been chained to the bedpost the night before the operation. Having regard to his health, age and the absence of any previous conduct suggesting that he was a security risk, the restrictions on his movement were disproportionate to any security requirements. The Court also noted in this case that on its visit to France in May 2000 the European Committee for the Prevention of Torture had recommended that the practice of attaching prisoners to hospital beds should be outlawed.

Elderly and infirm prisoners

The detention of elderly and infirm prisoners may give rise to claims under article 3 and the case law thus far suggests that the courts will attempt to conduct a pragmatic and proper balance between the functions of the criminal justice system and the human rights of the prisoners. The European Court adopted a 'hands

off' approach in *Papon v France*,²⁴ where the applicant had argued that because of his age and the state of his health his incarceration constituted a violation of article 3. It was held that although the Court did not exclude the possibility that in certain conditions the detention of an elderly person over a lengthy period might raise an issue under article 3, in the instant case the applicant's general state of health and his conditions of detention and treatment had not reached the level of severity required to bring it within article 3. In coming to that conclusion the Court noted that none of the member

states had an upper age limit for detention. Similarly, in *Matencio v France*²⁵ the Court held that there had been no violation of article 3 when a prisoner suffered a stroke in prison and claimed that his detention and conditions of detention violated the Convention. In the Court's view he was offered adequate medical assistance and thus the threshold in article 3 had not been reached.

This approach was followed by the domestic courts in *R (Spink) v Home Secretary*,²⁶ where it was held that the refusal of the Secretary of State to grant compassionate release to a prisoner serving a life sentence and who had been diagnosed with terminal cancer, and whose life expectancy was estimated at between three and six months,

was not in breach of article 3. The Home Secretary had refused his request for two reasons because the prisoner represented a real risk of reoffending, and had not satisfied him that there were exceptional circumstances to justify release. The Court of Appeal held that it was important to bear in mind that the claimant was a serving prisoner and that it is in general in the public interest that the allotted sentence is served. Equally, the risk of reoffending was a material factor for the Secretary of State to consider. The Court of Appeal noted that there had been no recommendation to move the claimant to a hospital, and he had, despite his condition, remained reasonably fit and mobile. Further, although he had been handcuffed when in hospital, this was after a suitable risk assessment had been carried out with respect to the risk of him committing acts of violence.

The Court also noted in this case that on its visit to France in May 2000 the European Committee for the Prevention of Torture had recommended that the practice of attaching prisoners to hospital beds should be outlawed.

22. *R (Faizovas) v Secretary of State for Justice*, *The Times*, May 25 2009.

23. (2005) 40 EHRR 44.

24. (2004) 39 EHRR10.

25. Application No 58749/00.

26. [2005] EWCA Civ 275.

However, the European Court is more likely to find a violation of article 3 when such prisoners cannot be guaranteed adequate medical and other care while serving their sentence. For example, in *Mouisel v France*²⁷ the Court held that the failure to release a seriously ill prisoner from prison amounted to a violation of article 3 of the Convention. In that case the prisoner had contracted leukaemia and complained of the standards of his treatment before his ultimate release. The European Court noted that the prisoner was suffering from permanent asthenia and fatigue, that he was waking up in pain in the night and that there was a psychological impact of stress on his life expectancy. Further, the Court noted that the prison was scarcely equipped to deal with illness, and had failed to transfer him to another institution. Consequently, the Court found that the authorities had failed to take sufficient care of the prisoner's health to ensure that he did not suffer treatment contrary to article 3.²⁸

The case law of both the European and domestic courts in this area remains cautious and highly dependent on the individual facts and it is clear that exceptional circumstances need to be present to find a violation of article 3. For example, in *Sawonui v United Kingdom*,²⁹

the European Court held that the imprisonment of a 79-year-old war criminal was not, in the absence of other evidence of ill treatment or exceptional hardship, in violation of article 3, provided the prisoner was in receipt of appropriate medical care.

Article 3 and the sentencing of disabled prisoners

Given that the courts are 'public authorities' under s.6 of the Human Rights Act, and thus have a duty not to breach Convention rights, it is clear that when carrying out their sentencing functions they have some power to rule on the question of whether the custodial sentence of a disabled prisoner would be in violation of

article 3. This will impose a duty on the courts to carry out their functions consistently with article 3, both at the initial sentencing stage and when asked to consider release or deferral.³⁰ For example, in *Kupczak v Poland*³¹ the European Court found a violation of article 3 when the domestic courts continued to extend the prisoner's pre-trial detention despite his ill health and the lack of availability of a morphine pump to aid his chronic back problems.

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inhuman or degrading punishment. Thus as with prison conditions, the court is primarily concerned with whether the prison has the necessary facilities to cope with the prisoner's disability rather than the more general question whether imprisonment would be an inhumane option for a person with such a disability. For example, in *R v Hetherington*,³² the Court of Appeal held that although, following the European Court's ruling in *Price v United Kingdom* (above), the prison authorities had a duty to cater for a prisoner's disabilities, on the facts there was sufficient evidence that Winson Green Prison could cater for the

claimant's physical disabilities and that accordingly his sentence of 18 months for possession of indecent photographs did not contravene article 3.

Moreover, in *R v Qazi*,³³ the Court of Appeal provided cautious guidance as to when it would be appropriate to rule that a sentence of imprisonment would be in breach of article 3. In this case the prisoner suffered from a genetic disorder which required blood transfusions every three to four weeks together with infusions of medication and appealed against his sentence of five years and six months' imprisonment following his conviction for fraud. He had been sent to a category B prison where arrangements were made to deal with his complex medical problems, but it became apparent that it was very difficult to provide him with

27. (2004) 38 EHRR 34.

28. The Court also took into account the fact that the prisoner had been handcuffed to and from chemotherapy sessions, of which the European Committee for the Prevention of Torture had been very critical. See also *Farbthus v Latvia*, decision of the European Court, 2 December 2004.

29. Application No 63719/00, declared inadmissible on 29 May 2001.

30. See *Taddei v France*, note 15, above.

31. Decision of the European Court, 25 January 2011, application No. 2627/09).

32. [2009] EWCA Civ 1186.

33. [2010] EWCA Civ 2579.

the necessary care at that prison and his condition deteriorated. Accordingly, he was re-categorised as a category D prisoner on exceptional medical grounds so that he would be eligible for release under temporary licence for medical outpatient appointments, and a care plan was put into place. He was eventually transferred to an appropriate prison and then appealed on the basis that the continuation of his imprisonment breached article 3.

Although the Court of Appeal reduced the length of his sentence, in providing guidance on when it would be in violation of article 3 for a court to impose a custodial sentence on a prisoner with a serious medical condition, it stressed that a custodial sentence was not necessarily in breach of article 3 and that the sentencing court would only order release if that was the only way to comply with that article. Further, it stated that once satisfied that arrangements were in place to care for the prisoner, a court need not enquire into the allocation of a prisoner to a specific prison or the facilities available at such. Thus, it was only when the fact of imprisonment itself would expose the prisoner to a real risk of a breach of article 3 that the court would enquire as to whether a custodial sentence would breach article 3. Finally, any breach of the rules with respect to medical treatment and conditions by the Secretary of State was a matter for civil redress and not for the Criminal Division of the Court of Appeal.

The decision reflects the courts' reluctance to dictate policy in this area or to establish and monitor minimum standards with respect to the incarceration and care of prisoners with specific needs; preferring to apply the broad principles of article 3 and the case law of the European Court in protecting the prisoner from inhuman and degrading treatment.

Conclusions

Although a legal framework exists both in domestic law and under the European Convention on Human Rights to challenge the incarceration and conditions of imprisonment of disabled prisoners on human rights grounds, it is clear that such challenges are limited to questions of general and broad compatibility with article 3. With respect to prison conditions, although the courts are willing to impose a specific duty on the authorities to provide adequate and specialist health care to disabled prisoners, they are not willing to rule on the moral and legal compatibility of incarceration of disabled prisoners. Equally, the approach taken by the Court of Appeal in *Qazi*, above, confirms that the main responsibility for securing humane treatment of such prisoners lies with the prison authorities, subject to judicial control using the broad principles of article 3.

Evaluating Peer Social Care Training in Prisons

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Background

This article describes a small scale training evaluation, which aims to inform decision making on the provision of basic social care training for prisoners. The aim of the training is to provide specific groups of prisoners with some basic skills to improve their ability to provide peer support to other prisoners with low-level care needs. The training is designed to augment formal care services and to enhance the role of prisoner-carers.

Managing prisoners requiring social care is set to become a greater problem as demography shows a trend towards increasing numbers of older prisoners. This is due to the increase in the prison population and changes to sentencing policy. Although the project was originally funded with the care of older prisoners as its focus, it is realised that the training will have a wider utility for other vulnerable prisoners, such as those with learning disabilities, mental health problems and prisoners with physical and sensory disabilities.

For the purpose of this article, the term 'prisoner-carer' will refer to a prisoner who is informally employed in a social care role within a prison. Their activities include low-level help and support, such as befriending, fetching meals and helping other prisoners to tidy their cells. The term 'older prisoner' refers to any prisoner aged over 55¹, and 'social care' refers to 'helping people through practical support to live ordinary lives'².

The training offered is viewed as a change intervention, aiming to increase the level and quality of care for specific groups within their respective prisons. The costs include the initial financial outlay of providing the training and the time taken to supervise trainees. Benefits include greater access to care, access to advocacy, cost and resource savings and improved

relationships between stakeholders. It is anticipated that the outcomes of the pilot will contribute towards new knowledge in the field and inform decision making on allocation of resources in this area.

The motivation for the training pilot has come from a number of sources:

- ❑ There appears to be a gap in service provision in many prisons³.
- ❑ Such a scheme has been recommended by HM Inspector of Prisons⁴.
- ❑ There is a growing consensus that it could be a valid intervention⁵.
- ❑ Many prisons already employ informal prisoner-carers. Training would therefore support the carers' role and should contribute to higher standards⁶.

As such it has become an objective of the Older Prisoners Action Group, which reports to the Primary and Social Care Sub-programme Board, based at Offender Health, Department of Health, (2009).

Two models of training have been piloted, the second having been developed on the basis of the experience of implementing model 1.

Model 1 comprises an NVQ level 2 in Health and Social Care. It consists of six initial training days then approximately six months of portfolio development. This pilot is being supported by key staff at HMP Shepton Mallet and delivered by experienced trainers from St Giles Trust. A small group of four prisoners are progressing with this training.

Model 2 consists of an unaccredited, informal, three day training course. This has been delivered at HMP Manchester and HMP Lewes. Two cohorts of eight prisoners have participated so far. Rather than comparing one intervention against the other, the intention is to evaluate their suitability for their respective establishments.

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1. A Pathway to care for older prisoners: a toolkit for good practice, London, DH, (2007).
 2. Cowen R et al, (2010). Unpublished report for the Older Prisoners Action Group.
 3. Cowan R (2010), as above.
 4. 'No problems — old and quiet': Older prisoners in England and Wales. A thematic review by HM Chief Inspector of Prisons, (2005), p.52.
 5. Moore, A, Unlocking care: improving the health of prisoners. Health Service Journal, June 2007.6. Prison Reform Trust briefing paper. Doing Time: the experiences and needs of older people in prison, (2008).
 6. Prison Reform Trust briefing paper. Doing Time: the experiences and needs of older people in prison, (2008).

An outline of each training programme

Model 1 NVQ Units	Model 2 Two hour workshops
Six study days, followed by six months' portfolio development	Delivered in three separate training sessions
Communication	An introduction to care work
Supporting health and safety	Communication in care
Developing knowledge and practice	Values and attitudes
Protection and promoting well-being	Disability awareness
Helping to plan care	Engaging with vulnerable adults
Supporting individuals in their daily living	Promoting health in older years
	Mental health and wellbeing

It should be acknowledged that, in the vast majority of cases, trained prisoners will not be able to gain employment in this sector on release from prison on the basis of their training in prison. This is due to Independent Safeguarding Authority regulations and Criminal Records Bureau screening. However, successful trainees will be able to demonstrate to future employers that they have used their time in prison usefully and (in the case of those completing Model 1 training) that they are able to learn to a nationally recognised standard of training.

There are several risks associated with the training, as was exposed in preliminary work within other prisons. These include: potential conflict with PSI 50/2008 (a Prison Service Instruction that relates to acceptable activities in prisons), changes to the Independent Safeguarding Authority employment policy, low numbers of applicants, and movement of prisoners around the estate. While these risks remain under consideration, the prisoners under training are participating in a way that is constructive for them, their establishments and the development of the training.

Literature search and appraisal of relevant literature

Searches were conducted along two broad themes. Firstly, to search for any publications on similar training interventions in UK prisons, and secondly to review published evaluations of prison based, vocational training.

The first step for both was to search the university library catalogue for books, journals and other material, such as conference proceedings. This was followed by a review of several databases, (ERIC, ERC, ASSIA, Sage, Psychart, Psycinfo), for any relevant articles in education, health, social care or criminology journals or electronic sources. Publications from the last 15 years were chosen for review in order to reflect recent policy and practice.

Most of the search results came from US publications, perhaps the most relevant being Cianciolo and Zupan's review of a training program on issues of aging for correctional workers⁷. This article evaluates a training intervention aimed at the workforce (not prisoners) and locates this within the context of service improvement and improvements in standards of care. It evaluates a course that was implemented five times, in four different prisons. The conclusions discuss a mixture of quantitative and qualitative data, although there is no indication as to how the qualitative data were collected.

None of the articles reviewed genuinely reflect the aims of this evaluation, although they do provide some interesting contextual information and discussion of methodological impediments. This appears to validate the need for a more focussed piece of work to be undertaken. Other information already known which has a bearing on the study includes evidence that the majority of prisoners have poor academic achievement⁸, knowledge that prisoners do not have access to such resources as the internet, and that attrition rates are high on NVQ courses. A British training package developed by the National Association for the Care and Resettlement of Offenders (2009) has been identified. There is no evidence that this training has been evaluated, however.

Evaluation design

A research proposal was lodged with the NOMS research ethics committee and the University Ethics Committee. However, it was decided that the study represents a course evaluation rather than research. Permission was sought from the respective prison governors and an evaluation methodology was developed to provide greater rigor.

The plan for the trial and evaluation of the training interventions follows a sequence broadly similar to the action research spiral⁹. Accepting the training interventions took place in separate prisons, it follows a process of enquiry, intervention (Model 1), observation, reflection; then further action (Model 2) finishing with

7. Cianolo P and Zupan L, (2004). Developing a training program on issues in aging for correctional workers. Gerontology and Geriatrics, Vol, 24 (3), Haworth Press. Supplied by the British Library.
8. Social Exclusion Unit. Reducing re-offending by ex-prisoners. HMG Cabinet Office (2002).
9. McNiff (1992) cited by Wellington J (2000). Educational research: contemporary issues and practical approaches. Continuum, London.

a final evaluation. Progress is on-going and observations and reflections are still being generated and analysed.

‘Action research aims at improvement, it is problem focused and context specific, and it involves a research relationship in which those involved are participants in the change process’¹⁰. Indeed, when used in stimulating organisational improvement ‘action research has much to commend it’¹¹. Action research is said to empower professional groups (nurses, educators and prison officers) to work together and solve problems.

The long-term plan is to create a self-supporting structure robust enough to withstand anticipated resource shortages. In Model 1, an external NVQ assessor has been required for at least the initial cycle of training. In Model 2, the researcher / change agent has delivered the training. It was originally thought that a local employee could co-facilitate the workshop in a ‘train-the-trainers’ style model, with the aim of leaving a structure in place. However, this has not been practical in the prisons piloted so far, largely for resource reasons. and because key staff did not feel confident delivering the material.

Significantly, Model 1 training is being carried out at HMP Shepton Mallet — a prison with a reasonably static population. The points of learning and reflections from this first intervention have been significant and have informed the second intervention (Model 2). Clearly a six month course is impractical in prisons with a higher population churn, such as local prisons, and a shorter model needed to be developed.

It was anticipated that the participants of the training would already work as either prison buddies or in similar roles like Age UK assistants. In terms of selection it was felt that local staff had a good idea as to which prisoners show an aptitude for care work and are appropriate for the role. In Model 1, a sample of four prisoners was selected from a pool of applicants who were later passed at interview. All prisoners underwent literacy and numeracy screening and will have to reach a defined level to be eligible for the training. The key stakeholders were staff occupying reasonably fixed roles within the prison and health care taxonomies. In Model 2, the participants were

recommended by the disability liaison officer and the primary care manager; all were providing support for frail or disabled prisoners.

Numbers of participants undertaking training

	HMP Shepton Mallet	HMP Lewes	HMP Manchester
Model 1	4		
Model 2		8	8

Many of the prisoner-carers had fulfilled informal caring roles before they came into prison. Their ages ranged from 23 to 55 years.

Methods

Data are being gathered using pre and post course questionnaires and semi-structured interviews with stakeholders. Stakeholders include local staff, senior management groups, staff from the voluntary sector, from health care and operational roles, aiming at a 360-degree evaluation.

The interviews aim to gather data on the quality and relevance of the training, any differences to the delivery of the prison regime and any differences to the delivery of health and social care.

Data analysis

The data generated to date have been analysed by highlighting quotes and categorising emerging themes from each individual interview using the principles of thematic analysis¹². The transcripts were read and analysed several times to check that all the themes and sub themes had been identified and refined.

Preliminary Findings

As Model 1 training continues, it is too early to state the overall outcomes, although some interesting and valuable data have been generated.

The long-term plan is to create a self-supporting structure robust enough to withstand anticipated resource shortages.

10. Hart E and Bond M (1995). Action research for health and social care: a guide to practice. Open University Press, Buckingham.
11. Hart E and Bond M (1995) as above.
12. Ritchie J and Lewis J, (2003) Eds. Qualitative research practice: a guide for social science students and researchers. Sage publications.

Model 1

The interviews with trainees at HMP Shepton Mallet revealed an interesting range of motives for wanting to become prisoner-carers. They could outline the boundaries of their role and believed they contributed to the delivery of health and social services within the gaol. More than half of the participants suggested that care work was the type of thing they would have done anyway but the training gave them more insight into what they were doing.

Stakeholders felt the training might support dignity and respect issues amongst the inmate population and that it would also help to build a sense of community. Interestingly, they felt that it might help to shift the burden of responsibility for health issues away from formal services. Other benefits were cited, such as helping prisoners to advocate for one another and increasing communication between staff and prisoners. Some anxieties were also expressed such as the prisoner-carers coping with the style of learning and safeguarding issues.

Model 2

The main theme from HMP's Manchester and Lewes was that the participants felt that the training was too short; a week of training was suggested as the minimum amount of input necessary. The prisoner-carers expressed the benefit of simply being brought together and given time and space to talk about their work, its difficulties and merits. This opportunity had never presented itself and it was felt that much could be learnt by sharing information and practice tips with one another. Interestingly, the participants felt that there wasn't enough formal support or supervision for them in their role and that this could be easily provided without much cost. Stakeholders felt they had noticed an increased sense of enthusiasm and that the training might give the role more credibility.

In all of the study establishments, the prisoner-carers described a sense of purpose that comes with the role; they felt like they provided a useful service and could offer more with greater levels of support. They

described the training as giving them insight into care issues and said it provided an element of clarity to their roles.

Conclusion

Changes to the prison demography mean that greater attention will need to be given to social care issues in prison environments. The literature searches revealed a perceived gap in evidence that this evaluation begins to fill. It may also stimulate the initiation of other studies in this field. Given the size, nature and context of the study, an action research methodology was proposed as a method of satisfying the issue of what type of training best supports the role of the prisoner-carer. As the size and function of prisons vary, two models of training have been proposed as change interventions, designed to meet the needs of the differing regimes. Fact finding about the result of these interventions is central to the strategy and provides the means of establishing whether or not they lead to an improvement in the delivery of services and levels of care. The findings to date show that the training interventions have been well received and are valued by the trainees and stakeholders from within the

establishments.

Questions that have not yet been addressed include whether the training courses are useful and sustainable over the long-term, and whether they can be justified in a cost-benefit analysis. Organisations such as NOMS and the Department of Health tend to like this kind of evidence before supporting interventions more fully. These features would need to be considered more fully in any future research. Importantly, no data are being collected from those prisoners receiving care and this will need to be followed up in a more depth research study. An alternative method of data collection might be to adopt a more quantitative approach, using survey questionnaires at identified stages in the training. This would also have the advantage of being more objective, thus reducing researcher bias.

More than half of the participants suggested that care work was the type of thing they would have done anyway but the training gave them more insight into what they were doing.

Supporting staff with disability

Robert Steadman is Chair of the Disability Support Network for NOMS Staff.

The National Offender Management Service (NOMS) has a workforce of around 45,000 employees. It has been estimated that around 13 per cent of employees in the public sector have a disability, which would equate to nearly 6000 employees in NOMS. Disability is therefore an issue that affects many people. Almost four out of five people with a disability developed this at the age of 16 or after and it is estimated that almost a thousand NOMS employees will develop a disability each year. It is therefore a dynamic issue that can affect people at any time. Disability can also affect employees domestically, so that it is estimated that one in three people are disabled or close to someone who is and nearly one in ten carry out unpaid caring responsibilities in addition to their work. Disability is therefore a more extensive and commonplace experience than many people assume.

Despite this, NOMS staff have not had access to a dedicated support service, until the NOMS Disability Support Network was officially born on 1st June 2009. The immediate reason for its creation was the reform that reduced the responsibilities of the Home Office and created the Ministry of Justice. Up until that point, the care and interests of disabled staff in prisons had been covered by the wider Home Office Disability Support (HODS), but the changes meant that prison employees were no longer part of the HODS remit group. Six staff decided to push forward with creating a new and specific group for NOMS staff, lobbying unions, existing staff support networks and issuing a questionnaire to all staff. Despite some resistance, over 500 responses were received and the majority of these were overwhelmingly positive. With the assistance of the Probation Disability Support Network, unofficial elections were then held for the executive posts and committee. It was only following this that the

Network was officially recognised. It was officially launched six months later and by this stage it had garnered widespread support and the event was supported by unions, senior prison managers and politicians.

The membership has subsequently grown to over 1300. The Network is also starting to spread as each establishment has now appointed a representative and each region a co-ordinator. As a result, the Network is able to draw upon a broad base of support and information.

It is the aim of the Network to work to the social model of disability.

This approach emphasises that the interaction of an individual's impairment with the barriers they face is the disability rather than the impairment itself.

The work of the Network

It is the aim of the Network to work to the social model of disability. This approach emphasises that the interaction of an individual's impairment with the barriers they face is the disability rather than the impairment itself. As a result our focus is on supporting the individual's needs on a daily basis in order for them to work on a level playing field to those without a disability. This approach informs all of the work we carry out.

The Network argues that not only is there a legal and moral obligation to treat people with a disability equally, but there is also a strong business case for this. Organisations such

as the Employers Forum on Disability have promoted fair employment practices and have challenged many myths, such as demonstrating that people with disabilities are as effective as anyone else in their jobs and that they stay longer and have less absenteeism. We echo this and argue that NOMS as a public sector organisation should be a model employer and will benefit from this in terms of reputation and performance.

Much of our work is focussed on advising and supporting individuals. They receive contacts by email, phone and post covering a variety of situations. In the first instance their approach is to liaise between our members and managers and hope

we are seen by all as a tool to find solutions, rather than a group that finds problems. Our advice and support can help managers as much as individual staff in providing the right support to get good performance and ensure that they comply with legislative requirements.

We have set up a webpage for all members of staff to access, which incorporates information on the Network and our regional coordinators, guidance on reasonable adjustments, various fact sheets, membership forms, guidance on disability leave and much more. This not only provides information about the organisation but also acts as a source of self-help information for staff and managers. This provides a useful source of reference and information.

The core of disability employment policy and practice is the making of reasonable adjustments in order to enable individuals to carry out their work successfully. However, this is a complex area as what is 'reasonable' will be dependent upon the circumstances of the individual case. For individuals with disabilities they may find it difficult to ask for or to access the support that they need. For managers, it may be difficult to make judgements about adjustments or to access resources. In addition, other staff may be resentful or suspicious about differential treatment of individuals. The design, implementation and management of reasonable adjustments are therefore complex both technically and inter-personally. The Network can support individuals and managers in trying to navigate this difficult area. Although this is central to disability employment policy, it is nevertheless an area that is difficult, confusing and complex in practice. As well as providing guidance notes and individual support, we have also been innovative in opening up new avenues of co-operation with Access to Work, the Government body that supports employers and disabled people at work. In the East Midlands region, we are currently operating a trial looking at building improved practice in the provision of reasonable adjustments in the workplace.

Another major strand to our work lies in policy and practice development. All public bodies, including prisons, have a statutory duty to promote equality for people with disabilities. One of the main

ways that this duty is met is for policy leads at HQ and managers in prisons to undertake Equality Impact Assessments (EIAs), looking at how policies and functions affect people from different groups, including people with disabilities. We provide advice on this and support the assessment and identification of follow up action to address deficits. This is an important long-term tool for improving practice.

We have highlighted a number of practical and policy issues that have arisen and assisted with finding solutions. For example, the software for P NOMIS, the electronic prisoner records system, is not compatible with our assistive technology. We are now working with others to highlight and address this

issue. This illustrates some of the problems that can occur where impacts are overlooked or not fully understood when new policies are introduced.

Other examples of policies that we are currently considering are human resource policies aimed at improving fitness and managing attendance. With the drive to reduce absenteeism over recent years, we have been concerned that some people with disabilities have been detrimentally affected. Whilst we recognise that there is a legitimate balance between the needs of the organisation and those of individuals, we are looking at how referrals to occupational health professionals are being used and

whether disability leave is being properly utilised. This is an issue that has been highlighted by the Trade Unions Congress who have provide guidance and advice to union representatives supporting people with disabilities who face disciplinary procedures relating to absenteeism. We are also considering how the requirement for fitness testing for prison officers may have an impact on current staff and future recruitment.

Our role is also to work with NOMS in order to identify solutions to the issues we have highlighted. We have begun to undertake dyslexia testing on individual staff. This is not a full psychological assessment but it is a recognised tool for identifying dyslexia traits and tendencies. This test can provide information that helps to identify issues that an individual may be facing and provides us with an opportunity to work with them and their employing

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establishment in order to provide support and make reasonable adjustments.

The Network therefore provides a range of services at the individual and organisational level. Our intention is to improve practice and find solutions that enable NOMS to develop best practice in relation to disability at work.

Looking Ahead

The Network is still in its infancy, however, it has already demonstrated that there is a need for the services it provides and that there is significant work that is required in the future. Not only do we need to improve awareness and support for individuals who have disabilities, but there is a wider role in sensitizing and improving the organisational

capability in managing disability. This includes improving understanding, using impact assessments effectively and building skills in the making of reasonable adjustments.

Our work is also taking place in a challenging context with financial restraint effecting public services. This may have an impact on the support available to those with disabilities at work or out of work and this may have consequences for our members. In a more general sense, in the current period of change and reform it is essential that organisations such as the Network speak up so that the needs of our members are considered.

We are a relatively new organisation and our work has only just begun but its importance is already clear.

Interview: Rob Owen

Rob Owen is Chief Executive of St Giles Trust. He is interviewed by Jamie Bennett who is Centre Manager of IRC Morton Hall.

Rob Owen has been Chief Executive of St Giles Trust for the last four years. He joined them after two decades as an investment banker, looking for a leadership role that would provide him with the opportunity to work with people at the margins of society.

St Giles Trust was founded in 1962 as The Camberwell Samaritans. Initially their work focussed on those with mental health and social problems in the local community. Then, as now, much of their work was directed towards cases that fell outside the remit of the State or that crossed multiple departments, bridging the gaps between institutions and individual. In the 1980s, the focus of their work started to shift as homelessness increased and they started to work with housing issues. In the 1990s they established a housing casework service in HMP Wandsworth to help stem the heavy flow of local prison leavers who presented to them in the community. This work started to grow and now St Giles Trust focus more of their resources and energy towards helping offenders resettlement and change their lives.

St. Giles trust describe their mission as breaking the cycle of offending and their vision as creating safer communities by turning lives around and preventing the children of offenders becoming the next generation involved in the criminal justice system. Their services are based on what they describe as four key needs which, if they go unmet, greatly increase the chances of someone getting into or getting stuck in a cycle of offending. These key needs are a safe place to live, something to work for, positive relationships and support from someone who's been there.

In 2009-10, they spent £5.25 million delivering services to some 16,000 clients. They have been particularly noted for their peer advice work, which involves training prisoners or ex-offenders in order to provide intensive one-to-one advice, support and guidance to others. In 2009-10, they trained 318 people, over half of whom were in prison. They have also developed specific services to help released prisoners in the community including housing advice and the *Through the Gate* project, which provided holistic support to released prisoners. More recently, they have formed part of the consortium delivering the first pilot of the social impact bond at HMP Peterborough.

This interview took place in February 2011.

JB: What is the purpose of the work of St Giles Trust?

RO: We are in the business of breaking the cycle of offending. We have a unique way of doing that as we passionately believe in using reformed ex-offenders to deliver many of our front-line services. They are uniquely credible and uniquely persuasive with our client group and are very good at navigating the statutory systems because they are well trained by us. They go the extra mile and they become a role model with clients who have often disengaged with society.

JB: Some charitable organisations focus on campaigning through lobbying or media, some focus on service delivery, some focus on grass roots empowerment. Where does St Giles Trust fit in there?

RO: We are solely a service delivery agency. We want to be famous for helping offenders break their cycle of offending. I asked all my team recently what we want to be famous for as an organisation. The strongest feedback we got was that we want to be famous for our results. We want to engage with clients to create genuine behavioural change and help to address the inter-generational aspect of offending.

JB: How are you funded?

RO: We are 75 per cent statutory funded. We have 54 different statutory funding streams and they last on average 22 months. The other 25 per cent is from charitable trusts and corporate donations.

JB: There has been an argument made by several commentators that the reliance of the charitable sector upon government funding has reduced their opportunities to develop an independent voice and has recreated them as a delivery arm of the state. How would you respond to that view?

RO: I totally disagree. We are known as being a bit argumentative at times and a bit Bolshie — but I hope always in a constructive way. We have a view about what works and we are not shy about saying it. Statutory and Government agencies have to understand that there is a need for critical friends. Sometimes the insanity of the system needs pointing out. An organisation like St. Giles Trust should be proud of the fact that it is doing something that is not part of the mainstream but genuinely innovative, bold and gets results.

We are able to offer value when we come up with innovative services that are often pump primed by these charitable trusts and corporate investors. It is frustrating that when we have proved what works, it has not been pushed further into the mainstream. We need to fight tooth and nail to make sure they become part of the way things are done round here.

Our objectives are to give the best possible service to the 15,000 clients every year that we try to help. I don't have shareholders or any other group. All the resources I'm given go into trying to turn these lives around.

JB: Your work highlights the inter-relationship between poverty, social exclusion and criminal justice. You clearly take on a role in dealing with the effects, but what do you see as your role in highlighting and addressing the fundamental issues of social inequality?

RO: The issue I find most scary for society is the polarisation we are undergoing at the moment. Over the last couple of decades, the quality of life for most people has improved exponentially but there is a group that have been left behind and are falling further behind, not only in relative terms but also in absolute terms. The scary statistic for us is that the average prolific offender that we have in London has 4.3 children. These 4.3 kids are being born into a world with very few life chances. If we work with an offender and help them become better parents, then we are helping to break the inter-generational cycle. That is a great achievement to be able to help turn these people around now and impact on future generations.

JB: Is there an argument for saying that whilst it is important to highlight those at the extremes of poverty, it is also important to examine those at the extremes of wealth? Is that an issue that you have a concern about?

RO: We have some fantastic support from charitable trusts and some high-network individuals who have an understanding that there is a need to find pragmatic solutions to this polarisation. They are involved in some of the funding for our most innovative work. We are trying to crack that difficult nut.

JB: Looking at the four key needs that the St. Giles Trust have identified, three of them are

widely promoted by the state and other organisations: a safe place to live, something to work for, and positive relationships. However, the fourth stands out and that is: support from someone who's been there. Why do you believe it is so important to have that kind of peer support?

RO: That is the reason we get such persistently good results. The selection of these peer advisors is hugely important. It's not about academic rigours it is about their ability to be empathetic and strong-willed and give advice and guidance in a meaningful way. The training we then give them is to level 3 NVQ in advice and guidance. This enables them to understand and have specialisation in navigating the statutory systems that their clients have to face and that they may have faced in the past. Ultimately it is combining an intensive case management role with being a really positive role model. Clients often say that they have been promised things in the past but let down, what you get with someone who has been given a second chance is great loyalty and drive to not let their clients down.

One of the awards I am most proud of, and we have been given all sorts of awards, is that we were ranked 20th in our category of the Sunday Times 100 best companies in the UK to work for. That is because when you give someone a second chance and the equipment to do the job, they are dynamic and loyal. As an employer we have great success because we employ a lot of ex-offenders. They are uniquely driven to help these clients turn their lives around. It is a lesson to anyone who wants to give great service; give someone a chance to turn their lives around.

JB: One commentator noted last year that although prisons place great emphasis on turning lives around and getting prisoners into employment, they won't employ ex-prisoners directly. From your view that doing so gives a more empathetic and effective service, there may be a lesson there for the Prison Service?

RO: As well as the Prison Service, why not probation Service, local authorities or the NHS. Our advisors would be fantastic giving housing advice in local authorities for example. There is huge scope for someone who has turned their life around to work as

If we work with an offender and help them become better parents, then we are helping to break the inter-generational cycle. That is a great achievement to be able to help turn these people around now and impact on future generations.

an effective information officer or prison officer. One day I hope that will be an opportunity available to somebody who has demonstrated that although they have made mistakes, they have turned their life around and are able to help other people turn their lives around.

JB: An example of how you have used this approach in prisons is your flag ship peer advice service. Can you describe this service?

RO: This is our *Through the Gate* service, which has been built up from working in a couple of boroughs in London to 14 boroughs at its peak, helping 1500 high and medium risk offenders being released back into London. This was delivered in partnership with London Probation. They were having problems with high and medium risk offenders who had difficult lifestyles and had intensive needs for housing. Housing is our specialisation, so we were able to provide that service. It took all that was right about the charitable sector working with the statutory sector; it played to both of our strengths.

This project was evaluated by Pro Bono Economics, which is an organisation that was set up by economists in order to help charities evaluate their impact on the ground. We were fortunate to be selected as one of the first organisations to be evaluated. They were open with us and said that if we were destroying value then they would have to report that as aggressively as if we were creating value. This evaluation report was peer reviewed at the highest levels of Whitehall. It measured the outcomes for the 1500 offenders we worked with, using data from probation and the police. This showed that we were able to reduce recidivism by 40 per cent, which is a staggering amount. Financially, they also wanted to articulate the savings to society, including the reduction in the victims of crime. After much to-ing and fro-ing between ministries, they came up with a bomb proof narrative which showed that for every £1 invested in this programme, £10 was saved across all of the statutory services. That is a remarkable study that shows the real value created by the work of our peer advisors. It helped pave the way for an acceptance that if you support radically different ideas, it can generate radically better results.

JB: As part of your peer advice work, you have opened a call centre at HMP Send, where peer advisors provide resettlement support to

women prisoners. How did the idea for this initiative come about and how was this put into place?

RO: It came from an idea by one of our advisors. I love that we develop grassroots ideas. That is part of the DNA of St Giles Trust as so many of our advisors are ex-service users and able to provide insights into how our services should be run. We discovered a gap in the market. I approached the Charles Dunston Foundation in order to think about funding a call centre in a female prison as they are a foundation that specialises in telecommunications. We have always tried to find a win-win-win situation. Those people who operated the call centre would later be able to

find employment on release. The idea is that they do their training and become professional call centre workers, so they can then go on to find work in the future. We want to have phone lines going into every female prison so that we can offer every female prisoner practical advice and support from someone who understand the issues they are facing.

JB: How was this introduced? There must have been hurdles to overcome regarding the security and public perception risks.

RO: It was unbelievably painstaking. It was probably one of the most painful and hard fought battles I've ever experienced. Fortunately sanity shone through and we were able to overcome the hurdles that were placed in our way. At the top there was an understanding that this was being done for all of the right reasons. We managed to set up the call centre and we are now trying to roll it out into all the female prisons. We want all women prisoners to be able to get access to this groundbreaking advice and guidance helpline, so any prison governors interested in being connected please get in contact.

JB: What was the process? Did you get senior level sponsorship?

RO: Yes, we pitched this to the very top end of the Ministry of Justice and National Offender Management Service. We focussed on the fact that we give real skills to people while they are serving their sentences and these skills link to employment opportunities on the outside.

JB: Is there potential for your work in developing innovations such as cell centres to become a vanguard, opening up opportunities

Housing is our specialisation, so we were able to provide that service. It took all that was right about the charitable sector working with the statutory sector; it played to both of our strengths.

that commercial companies can later exploit. What is your view of this?

RO: I don't think that over the next few years there will be huge call centres opened up in every prison across the UK, delivering Barclays Bank or BT services. What we are trying to achieve is ensure that the money spent leads to meaningful work that helps people find a job on release. The call centre idea is spot on in giving people the right skills and experience to get meaningful work on release. Our advice and guidance work is all to level 3 as we know that is the minimum level that any employer needs to give someone a job.

JB: It isn't a fanciful idea that there might be commercial exploitation of these opportunities, after all, there are call centres in US prisons and a prison in India has recently opened its first call centre. Internationally there are examples of this happening. Whilst the first example in the UK is for a charitable purpose, is potential for that to develop later?

RO: It's about trying to give people the right skills when they are in prison in order to get them into meaningful work in prison and on release. The more that can be done in prisons to achieve that is a good thing. The applications for a call centre in UK prisons can be taken as far as you like. A corporate organisation training people in prisons to take them on as call centre handlers upon release could be an interesting concept.

JB: The Government have talked extensively about what they describe as the 'Big Society'. What is your understanding of this concept and what do you see as your role in realising this?

RO: I have views on what I would like the Big Society to mean. I would like it to mean a genuine and simple idea of intelligent partnership where it is recognised that each sector has its strengths. The Big Society should be about enabling each sector to work to those strengths and working together to create solutions for those that are at the extremes of society. For us working with some of the more chaotic offenders, we can work in tandem with statutory services, as we did with London Probation. Our specialisation was working with clients they were struggling with, particularly around issues of accommodation. We were able to put together the pieces of the puzzle, particularly where statutory

services were less able to engage with them. Some offenders have disengaged from statutory services, if there are any there, but our peer advisors are uniquely able to talk to them and gain their trust. That is what gives us the ability to get £10 of value for every £1 spent.

JB: You are part of a consortium delivering services to prisoners released from HMP Peterborough using the new approach known as social impact bonds or payment by results. Can you describe how this contract will work and how it is being funded?

RO: The social impact bond, developed by Social Finance, has taken even longer than our call centre to come to market, but we need to understand the enormity of this. It is the first of its kind in the world. It is a way of trying to pump prime money into services that will prevent offending. That is a revolution in itself. I am very proud that we are part of that. Social Finance deserves great credit for their tenacity in making this new model come to life. We were selected to deliver this work on the back of our Through the Gate work and our track record.

Payment by results and social impact bonds are slightly different models. It depends on who is taking the risk. With social impact bonds, the people taking the risk are the investors. The investors in this first social impact bond are predominantly charitable trusts using their capital base, or high net worth individuals. They want to be part of something that creates social value as well as giving a return on their investment. It is a pioneering new asset class of investment that even Barack Obama is now championing in the US. The risk sits squarely with them. The payment by results model is simply that a supplier of services to the state takes on a huge financial risk. It's a slight difference in models.

Social impact bonds are a good idea because they create a win-win-win situation for anyone involved. For the clients it is a win situation because the clients are all serving under 12 months and they are the more chaotic end, with a high prevalence of repeat offending but with little support. For the first time, they are getting creditable, uniquely engaging and persuasive case management, a St Giles peer advisor working with them and helping to meet their needs, so they have a fighting chance of not going back to

It's about trying to give people the right skills when they are in prison in order to get them into meaningful work in prison and on release. The more that can be done in prisons to achieve that is a good thing.

prison and breaking that ingrained cycle of offending. For us as an organisation, we are funded by Social Finance to deliver this work, along with the Ormiston Trust and YMCA. We have an intelligent partnership with Social Finance, utilising our core strengths to deliver the work that we are really good at. Society wins because by investing in this work you can create a greater saving when looked at across the range. I am most proud that our work will reduce the victims of crime and at the same time save the hard pressed tax payer millions of pounds. This approach works to everyone's strengths, we work with statutory providers and we are the glue that makes sure that the clients get the best out of the services that are available to them and helps them if they wobble and are at risk of going back to reoffend. This is a new way of doing it and can be really effective.

JB: What services will you be providing in order to reduce reoffending amongst your client group?

RO: Before release we will be assessing them and identifying the issues they need to confront and find practical solutions so that on address we can address the issues that are contributing towards their offending. The classics are around accommodation, family mediation, routes into sustainable employment, drug issues and so on. We will have someone there who will force the client to address the underlying issues and be the glue to help them navigate across the services. For example making sure that they can get to the benefits office, so they are not getting into offending because they haven't sorted that out, or getting them to the help they are entitled to with housing as we know stable accommodation is the foundation for reintegration into society. Once we have that, we can start dealing with the individual issues, so we can reduce the frequency of their offending and eventually stop. We also want to reduce the severity of offending.

JB: How will your success and therefore payment be measured?

RO: It is a complex model using statutory measures over a five year programme. We will compare with a predictive rate on an annual scale and there is a tiered payment scale for investors. As a provider we are not taking on a lot of the risk and we will not get a lot of the rewards. It is a complex measure that looks at the frequency of conviction, but not the severity. What they are doing is finding a way that measures reductions in offending and the only

I am most proud
that our work will
reduce the victims
of crime and at the
same time save the
hard pressed tax
payer millions
of pounds.

way we can do that is to use conviction data. We have to be pragmatic about that.

JB: It has been announced that there will be a further six pilot projects. Do you believe that there is sufficient market for social impact bonds in order to provide services beyond the pilots and potentially in 140 prisons?

RO: We are at the tip of the iceberg in terms of the application of social impact bonds. This is a new asset class of investment and there is easily a capacity to create £50 or £60 million of bonds across a broad spectrum. Why shouldn't an insurance company be investing their capital in a social impact bond rather than treasury markets, as they are a natural investor in such projects? Why shouldn't a local authority that has a problem with 150 prolific offenders be pump priming a social impact bond to address the underlying problems of a small but significant number of people in their community? It is the start of potentially funding and pump priming preventative work.

JB: What is your view on this commercialisation of the criminal justice field? How do you feel about your client group, socially excluded people, becoming a profitable commodity?

RO: Crime is a hugely expensive problem in the UK and the rates of reoffending are very high, and there are all those ruined lives. What I would want to see is for the state to be a better allocator of its limited resources to deliver excellence and deliver something that makes a meaningful difference to the people they serve. It is frustrating that there are services out there that tick boxes and cost money but do not stop people from offending or reoffending. We know if we want to get someone housed we know we will have to take them down to the homeless unit and advocate on their behalf for the four or five hours necessary rather than giving them a piece of paper that says 'go to the homeless persons unit', which wastes the homeless persons unit's time because they may not be relevant to be housed and it increases the frustrations of the client which may make them more likely to re-offend, and you still have to pay that person who hands out the piece of paper. When you have someone who is motivated, understands the statutory silos and wants to get that result, then that is a good use of tax payer's money.

JB: So you would be more concerned about the quality of the service rather than who profits?

RO: Yes. I don't think there will be a lot of profit. If you were a hugely profit-orientated organisation, this isn't going to be a gold mine. We need to address the issue of directing the resources to the person who is best at doing it for that client. There is also the reverse cherry-picking nature of the work we do, in other words working with those who are most complex and most risk to society. We need to do what is best at supporting those who are world-class at focussing on those 16,000 who are the hard core, prolific offenders in the UK, who cost billions and pose the greatest danger. If there is a system that can be developed that rewards organisations like St Giles Trust who deliver excellence at turning people's lives around, then that is what we need.

JB: What do you see for St Giles Trust in the future?

RO: The secret of our success is using ex-offenders and I want to see that not as something that is peripheral, but something that is part of the mainstream of bringing down reoffending. I would love to see St Giles Trust seen as revolutionary in doing things radically differently and leading to radically different results. What I would love to see in the future is that every released offender is met at the gate by someone who is well trained, highly motivated, effectively managed as that will give them a fighting chance to stop their offending and for their children it will break the inter-generational cycle of offending.



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Reviews

Book Review

Injustice: Why social inequality persists

By Danny Dorling

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Britain is one of the most unequal countries in the world. There is a greater disparity between the top 20 per cent and the bottom 20 per cent than our immediate neighbours in France, Germany, Italy and Scandinavia¹. Just 1 per cent of the population owns 23 per cent of the marketable assets in the UK and the top 10 per cent owns about half the assets and receive almost a third of the total income². In this book, Danny Dorling, Professor of Human Geography at the University of Sheffield, argues that this is not natural but is caused by deliberate social, economic and political choices. He shows that although inequality was consistently reduced in the UK between the 1920s and the early 1980s, it has since that time grown significantly and been maintained. He goes on to explore the assumptions, values and ideology that sustain and legitimise this situation and discusses the wider social effects.

In his seminal work that shaped the creation of the welfare state, William Beveridge argued that there were five social evils that needed to be slain by the post-War New Jerusalem³. These were the lack of: education (ignorance), money (want), work (idleness), comfort (squalor) and the lack of health (disease). By focussing on

these, the 'welfare state' reduced inequality systematically and sustainably. However, the rise of the New Right in the UK and USA in the 1980s saw an erosion of the welfare state and the emergence of a more individualised and marketised society. Dorling argues that with the amelioration of these five social evils and the consequent reduction of inequality they have been replaced by five tenets of contemporary injustice: elitism is efficient; exclusion is necessary; prejudice is natural; greed is good, and; despair is inevitable. Although these beliefs and values are not openly articulated, Dorling argues that they underpin contemporary economic, social and political thought.

The first of these new tenets is elitism. Education has been improved and expanded, with illiteracy virtually eliminated and higher education more accessible. However, in place of ignorance, Dorling argues that elitism has grown as reflected in the belief that some people by birth, ability or application deserve to hold power and prestige. He challenges these ideas by exposing that the attainment of qualifications and access to the most prestigious institutions is still skewed by birth and parental wealth. The idea that these individuals are somehow super-human legitimises these inequalities.

The second tenet sees exclusion as a necessary consequence of the individualised, competitive environment that promotes 'winners' and 'losers'. Those who win can buy themselves out of accountability and scrutiny, whilst those who lose are in precarious roles and are left without

the protection of unions, good contractual conditions and pay. This bifurcation of the top and the bottom, it is argued, arises from the market philosophy that has come to dominate. Third, Dorling describes how those who are on the margins are the subject of scorn, and that this prejudice is seen as natural. He describes how those living in poverty are represented as feckless, dangerous and a drain on the state. He goes as far as to suggest that they are seen as sub-human and describes how certain groups — migrants, excluded youths or those in poor estates — are demonised as being inherently inferior. He illustrates how seeing groups in this way compromises their human rights and legitimises oppressive measures being taken against them.

Fourth, Dorling argues that greed is perceived as good and that the excess wealth of the rich and famous is presented as the ultimate achievement. However, Dorling describes how competitive individualism and the desire to retain perceived status is a source of stress and insecurity for many people and has contributed to Western over-borrowing which led to the financial collapse of 2008. Fifth, Dorling argues that although physical health provision has improved, the contemporary world is characterised by growing levels of mental health problems including anxiety and depression. He argues that this is not inevitable but instead that individualism, competitiveness and inequality have left people feeling a profound sense of malaise and despair.

By tackling these themes, Dorling's book complements an illustrious body of work. By

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1. Wilkinson, R. & Pickett, K. (2009) *The spirit level: Why equality is better for everyone* London: Penguin.
 2. Rudge, T. & Wright, S. (eds) (2008) *Understanding inequality, poverty and wealth* Bristol: Policy Press.
 3. Beveridge, W. (1942) *Social insurance and allied services* London: HMSO.

exposing the unarticulated but fundamental assumptions that underpin and legitimise inequality, this carries out a similar role to Stanley Cohen's great work on the ways that human rights abuses are justified and denied⁴. In illuminating the psychological scars and social effects arising from contemporary society, this work also is linked to that of Richard Sennett unpicking the harmful consequences of 'New Capitalism' for modern workers⁵. In addition, by attempting to muck-rake and agitate for greater equality, this book can be seen as a companion piece to Richard Wilkinson and Katherine Pickett's *The Spirit Level*⁶. In common with these works, Dorling offers a provocative and often uncomfortable critique of what many of us take for granted.

In discussing how this can be challenged, Dorling argues that change must start with individuals. He suggests that his book is a means through which readers can start to question their own way of thinking and behaving. For those working in prisons, this book will also raise some challenging questions about the use of criminal justice and imprisonment. When one considers that prison has disproportionately high numbers of Black people and is almost exclusively concerned with the socially excluded⁷, is this because they are inherently more criminal or is this the result of how 'crime' is defined and how the criminal justice system operates? Are the wealthy and powerful virtually excluded from prisons because they are law-abiding or is it because the harms they cause are not defined as 'crime' or they are able to resist and evade accountability⁸? In the reflective reader, this book raises uncomfortable questions about

whether, in common with other social institutions, imprisonment is a means through which inequality is maintained and entrenched.

This book holds a mirror to contemporary society and reflects back a stark and honest image. At times it feels like having the blinkers lifted to see how things are and appreciate that they don't have to be that way. Any work that can open up new ways of looking at the world comes highly recommended and this book does that in spades.

Jamie Bennett is Centre Manager of IRC Morton Hall.

Book Review

People with Intellectual Disabilities: towards a good life?

By Kelley Johnson and Jan Walmsley with Marie Wolfe
 Publisher: Policy Press (2010)
 ISBN: 9781847420695 (hardback), 9781847420688 (paperback)
 Price: £65.00 (hardback), £24.99 (paperback)

Johnson, Walmsley and Wolfe's collaboration ambitiously aims to 'challenge the values, the expectations and the ideas of those who exercise power over the lives of people with intellectual disabilities or other marginalised groups' (p 10). This book is presented as a journey of exploration which tells the 20th century history of approaches to intellectual disability in terms of a series of problematisations, critiques and reformulations of policy towards intellectually disabled people and, having done so, it mounts a fresh critique of existing policy.

The account of the emergence of institutional care in the early 20th century, the transition to community care in the second half of the 20th century, and more recently the development of market-based personalised services for intellectually disabled service-users is clear but not particularly original. Integrated into this history, however, is an insightful account of the way in which, since the 1980s campaigners and policy makers have been focused on providing for the intellectually disabled an 'ordinary life' or a 'life like any other.'

A life that is merely ordinary is not, Johnson and Walmsley note, one that many of us choose to make the object of our own endeavours. But existing policy has, they claim, focused on establishing for disabled and intellectually disabled people rights to the ordinary goods citizens are deemed to enjoy — most notably, in the contemporary context, individual autonomy and access to employment. And, they argue, an emphasis on the goal of an ordinary life for intellectually disabled people has led to a focus — sometimes an obsessive, unrealistic and unresourced focus — on work as the ultimate badge of citizenship, work as the ultimate gateway to social inclusion.

But, Johnson and Walmsley argue, instead of thinking in terms of providing an ordinary life for intellectually disabled people, we would do better a focus on creating the conditions for a 'good life'. With a good life at centre stage, they say, policy will be more inclined to recognise and confront gaps such as that between the rhetoric of living an independent life in the community and the isolation often experienced by intellectually

4. Cohen, S. (2001) *States of denial: knowing about atrocities and suffering* Cambridge: polity Press.

5. For example Sennett, R. (2006) *the culture of the new capitalism* New Haven: Yale University Press.

6. Wilkinson & Pickett. (2008) see n.1.

7. Social Exclusion Unit (2002) *Reducing Re-offending by Ex-prisoners* London: Social Exclusion Unit.

8. For example see Hillyard, P. et al (2005) *Criminal Obsessions: Why harm matters more than crime* London: Crime & Society Foundation.

disabled people. Similarly, a focus on a good life for the intellectually disabled would encourage reflective questions about the nature of the work that they are encouraged to do, and indeed the question of what constitutes a good life for those unable to work. A focus on a good life, as opposed to an ordinary life would go beyond providing the basic conditions for 'normal' living, whilst drawing attention to the unique journey each individual must make as they imagine and pursue a good life for themselves. As well as providing basic goods such as decent housing and access to work, this perspective would draw more attention and resources to the cultivation of capacities that are required to exploit and enjoy those goods. Drawing on the philosopher Martha Nussbaum, the authors highlight the need to equip intellectually disabled people with such things as a sense of affiliation, imagination, and a rich internal life.

The authors, it should be noted, are not prescriptive about the content of a good life, arguing that each individual needs to imagine and pursue it for themselves. However, based on a brief review of the concept in Western philosophy, they suggest that it is likely to consist of some combination of pleasure, virtue, duty, happiness, the use of reason, freedom and constraint. Johnson and Walmsley admit they are no experts in the field, however the

coverage of this topic is disappointingly thin given its centrality in their argument.

The most compelling insight provided by this book is the way in which an 'ordinary life' as a focus of policy has, in recent years, led to insufficiently ambitious interventions and policy which have been organised around concepts and ideals that have dominated wider political thinking about the relationship between government and citizens. Individual choice, individual budget holding and access to the workplace have all been posited as solutions to the problems faced by intellectually disabled people, with insufficient attention paid to the ways in which individuals with intellectual disability may or may not be able to meaningfully exercise choice, manage their own care and support, or find meaningful work.

However, although a few examples are used to sketch out ways in which carers can address some of the difficulties that arise, from a practical perspective the main flaw in the book is that it gives way to calls for more investment in training and resources for carers whilst offering no proposals for creating the political will needed to realise these things. Having said that the core argument — for a focus on a good life, as opposed to an ordinary life for intellectually disabled people — is one which can be applied readily and productively

by all those who work with intellectually disabled people.

Reflecting on the book in an operational prison context, I am encouraged when I recognise occasions when staff have intuitively applied Johnson and Walmsley's arguments for some prisoners with intellectual disability. However it is, perhaps, relatively easy to provide individualised support for a minority of individuals with the most evident special needs. More broadly, and in the light of the Johnson and Walmsley's claim that their arguments can be applied to all those exercising power over marginalised groups, it is fitting to ask the challenging question of whether policy regarding the wider prison population devotes attention to 'ordinary' goods such as housing and employment, at the expense of resourcing offenders to imagine and to live a 'good life' in prison and subsequently in the community. There are, undoubtedly, many examples of prison based programmes that go this extra stage. Nonetheless there remain many occasions when we might do well not just to ask if prisoners have their basic, 'ordinary' needs met but to ask the more ambitious question of what could be done to facilitate each individual's journey towards a good life.

Dr. Rachel Bell is a senior officer at HMYOI Feltham.

Interview: Bettina von Kameke

Bettina von Kameke is a photographer and is interviewed by Jamie Bennett, Centre Manager of IRC Morton Hall.

Bettina von Kameke is a professional photographer whose latest project is a study of HMP Wormwood Scrubs, exhibited at Great Western Studio in London. Her work focuses on the human aspects of the prison experience, including the everyday routine.

HMP Wormwood Scrubs is one of the most prominent prisons in the country. It was built between 1874 and 1891 and has a grand and distinctive gatehouse including two towers and a façade featuring busts of prison reformers John Howard and Elizabeth Fry. The building has been listed due to its architectural merit. The establishment currently operates as a category B local prison for men, holding primarily prisoners on remand, following conviction and serving short sentences. It has a population of over 1200 prisoners.

Bettina von Kameke was born in Germany and moved to London in order to study at the renowned Central St. Martin's School of Art and Design, from which she graduated in 2002. Subsequently she has carried out a number of projects that have focused on enclosed communities. This has included sailing with 31 Burmese merchant seamen from England to South Africa. She has also taken photographs of the 23 Benedictine Nuns in the Tyburn Tree Convent in London and travelled through the Czech Republic with the traditional family run Zirkus Humberto. During 2008 she was invited to an artists residency at Christ Church College in Oxford. Her work there involved 101 portraits of the academic and the domestic staff, the choristers, the clerks as well as the Cathedral staff, which form the Christ Church Community.

Her works have been exhibited in numerous cities including London, Berlin and New York.

This interview took place in March 2011.

JB: Your photography has often focussed on enclosed communities, including a merchant ship, a travelling circus and an order of nuns. Why have you focussed on these groups?

BvK: I am really interested in communities that are different from my own experiences, where I can become absorbed in a different world. Many of the communities I have photographed I have been able to go in and stand back and observe them in order to try to understand their day to day lives.

JB: It sounds like an ethnographic or anthropological approach

BvK: Yes, it could be described as that.

JB: Why were you interested in developing a photographic project in prison?

BvK: With my interest in closed communities, it was always inevitable that one day I would want to explore a prison.

JB: What background research or preparation did you carry out before you undertook the project?

BvK: It started several years before I carried out the project and it began with me cycling around the outside of Wormwood Scrubs on my bike. By doing this I could start to get a feel for the building, its scale and in some places I could glimpse inside. On these tours around the prison, I would also speak to some of the staff who came in and out. This gave me a better understanding and they also told me who I would need to contact.

I then started to get as much information as I could, by speaking to people who had been to prisons and reading articles and stories in the media. The book I read that had the biggest impact was Erwin James' *A Life Inside: A Prisoner's Notebook*.

JB: How did you gain access?

BvK: I wrote a letter to Wormwood Scrubs, where I described my intentions and what I wanted to achieve. Wormwood Scrubs showed interest and invited me to discuss my ideas further. After the interview I had a tour around the prison, on the basis of that tour, I wrote a detailed proposal. After a couple of months my proposal got approved, all the relevant papers got checked and I had to undertake a security training.

The project was funded by the Arts Council.

JB: Your pictures don't appear to include prison staff. Why did you decide to focus on prisoners?

BvK: I did take pictures of staff and prisoners. In particular, my work tries to draw out the humanity of institutions and that was often seen in the ways that staff and prisoners interacted with each other. This is seen in my pictures and I also took some portraits of staff. These pictures haven't been included on my website or some of the samples used in media coverage of the exhibition, but there are many pictures of staff.

JB: What was your process when you were in the prison? How did you select and complete the photographs?

BvK: As well as me, I had an assistant and we were accompanied at all times by a governor. All of the pictures were taken on an analogue camera, which makes the process longer. We would be taken to the places we wanted to visit and photograph. We asked to visit various places including work places, wings and cells. I became interested in different aspects as the project progressed. For example, I took many pictures of cells as that was one way in which I could show how people personalised their space and made it their own. This is one of the ways in which humanity came through. By spending time in different areas and with different people, it meant that I could capture different moments. Altogether, I visited between ten and fifteen times over a year.



JB: How did you gain the consent of the subjects?

BvK: The governor who accompanied us would speak to anyone I wanted to photograph and explain what we were doing and that it was for an exhibition not the media. They were also told that they could withdraw consent at any time, and one person I photographed did do that later on.

JB: How did you consider the effects that the project may have on individual prisoners or upon the victims of crime?

BvK: We relied on the prison staff to do that for us to some degree. Although I may have spoken to people about what offence they were in prison for, when I completed the pictures I could not honestly remember. I focussed on the individual rather than what they had done in the past. The governor who accompanied us and spoke to the people we

photographed would say if anything or anyone we were planning to photograph was not suitable. All of the pictures were also submitted at the end of the process and were checked by the prison. I was asked not to use two of them because of the offences of those depicted. I accepted this.

JB: The content of the pictures seems to draw out a number of themes. The first is the nature of the prison itself. A number of your pictures emphasise scale, showing the size of the institution, but also some of the pictures draw out the 'clinical' appearance of the communal space such as the landings and workplaces. These pictures give a sense of a mechanical institution. How did you feel about the prison as an institution?



BvK: That is true of some of the communal areas, such as the wings which were very large. I also had a sense that the prison was a place where there were many rules over the lives of the people inside and that this was a highly controlled world. In some sense, the size and nature of the place meant that was inevitable and necessary. However, what I also wanted to focus on was how some spaces, such as cells were personalised with pictures and decorations. Each one was different and I took many pictures of these rooms as this was an important way in which the humanity could be shown.

JB: Your pictures draw out a sense of individual identity and domesticity. One of your pictures is of a man in the kitchen who is a very distinctive individual with a large, ornate tattoo on his arm.

BvK: That picture is of a member of staff. He was sitting there and I asked to take his picture.

JB: It is a distinctive image and gives a strong sense of character. Another example is your picture of a man looking through the observation panel of a cell door. Although that kind of image might not be unique, the focus on the individual and the strength of the individual character come through. What was your response to the idea of agency and individuality in a total institution like a prison?

BvK: That photograph at the cell door was not staged, it was captured in a moment. I was on a wing watching some inmates play table tennis. This man was peering out from his cell at what was going on. For me it is the images what most represent the claustrophobic nature of prison life.

Another image that has been seen a lot is one of a cell where there is both religious imagery and pictures of pin-up girls. This inmate decorated his personal space with the things which are most important to him, which probably gives him a sense of comfort and feeling secure.

JB: What was your sense of the gender aspects of imprisonment and your project. The prison you were in held only male prisoners and would largely have had male staff. As a woman going into that environment, what was your sense of that?

BvK: The first governor I met was a woman, so I did not have a sense that being a woman was an issue. There were also many female staff in the prison that we met and spoke to. I had an assistant on the project and I consciously considered whether that should be a man or a woman. In the end I decided that having a degree of balance was important and therefore I selected a man. However, I did not feel that gender had an impact on the project or on the way people responded to me.

JB: Some of the pictures appear to more directly expose and interpret the conflicts and tensions of prison life. For example, there is a picture from the gymnasium where prisoners working together are reflected in a mirror surrounded by a white wall with institutional signs. This is beautifully composed, looking like a painting, but also reveals something of the

unreality of prison life and the tensions between institutionalisation and human interaction. How did you respond to the conflicts and tensions that you observed?

BvK: I felt the gymnasium was a very intense place. Firstly there were many inmates in such a small space. Secondly strength, masculinity and public performance were so dominant that I felt a very strong and immediate reaction when I entered. For a moment I was scared, but then I brought my mind back to my intention. to focus on the humanity rather than being judgemental.

JB: The gymnasium is a place of public performance, where people are displaying their strength and masculinity, but also a place of great intimacy where people are physically close, touching each other and helping each other.

BvK: Yes, there was certainly an element of people showing off and helping one another.

There was a contrast between public and private spaces not only in how they looked, but also in the experience of them. For example, some people said to us that they did not feel safe on the wings or at work and the only place they did feel safe was in their own cell. A man we pictured with the scar was flamboyant and confident in public and was happy to pose for me but when I asked him is there anything you are scared of in here, he said: 'I don't want to be cut again.'

JB: What has been the response to your exhibition?

BvK: There has been a very positive reaction to the exhibition. Many people have come to see it and have been interested in the project. However, some people have found it difficult to accept the humanity in the photographs, they have wanted to feel a more brutal experience and get a stronger sense of punishment. A woman, who has worked at Wormwood Scrubs for many years, came to the exhibition and said: 'your photographs really reflect the atmosphere in Wormwood Scrubs, it is a little bit like a village.'

The exhibition ends in March but I hope that it will be taken on tour so that other people can see the photographs.

A selection of the photographs can be seen at: <http://www.vonkameke.com/>

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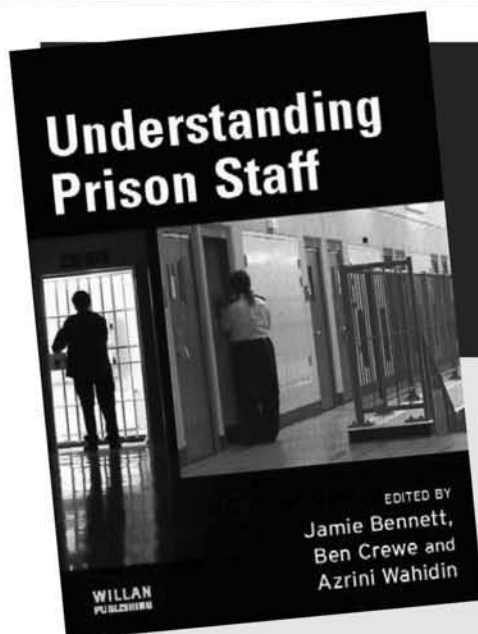
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