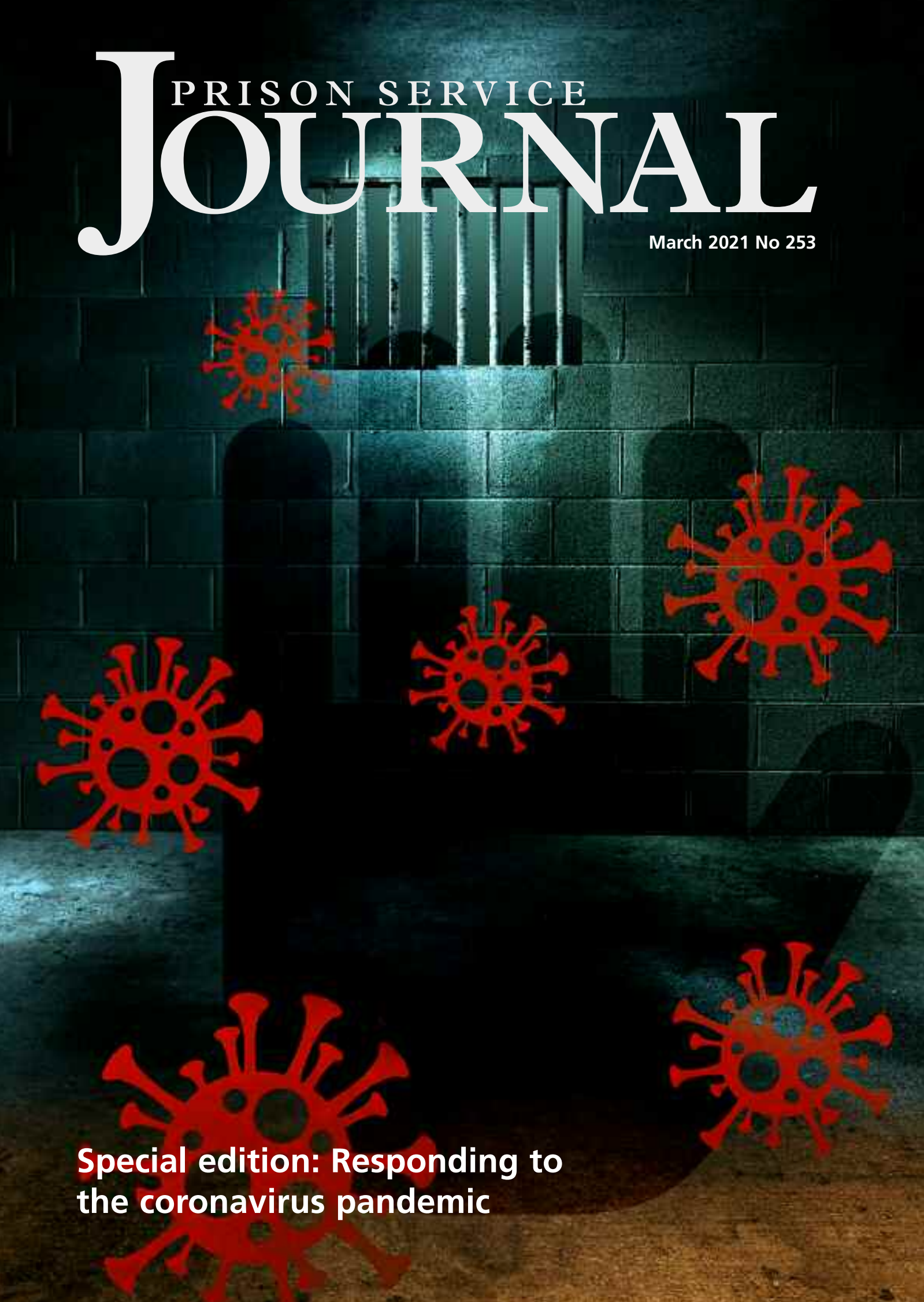

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Special edition: Responding to the coronavirus pandemic

Inspecting Prisons during a pandemic

Peter Clarke *was HM Chief Inspector of Prisons 2016-20. He is interviewed by* ***Dr. Jamie Bennett****, Deputy Director in HM Prison and Probation Service*

Peter Clarke was appointed HM Chief Inspector of Prisons in January 2016 and stepped down from the role at the end of October 2020.

He joined the Metropolitan Police in 1977 after graduating in Law from Bristol University. He served in a variety of uniformed and detective roles in London, including commanding the Brixton Division, and Staff Officer to the Commissioner of the Metropolitan Police. After serving as Deputy Director of HR for the 45,000 employees of the Metropolitan Police, in May 2002 he was appointed as Head of the Anti-Terrorist Branch at New Scotland Yard and National Co-ordinator of Terrorist Investigations, leading the investigation into all acts of terrorism in the UK and against British interests overseas. He retired from the police service from the position of Assistant Commissioner, Specialist Operations in 2008.

In 2009 he was appointed by the Prime Minister to be a member of the UK National Security Forum, created to advise Government on the implementation of the UK National Security Strategy. In addition to holding a number of advisory and consultative roles in the private sector, he was a non-executive Director of the UK Serious Organised Crime Agency from 2009-13. In 2014 he was appointed by the Secretary of State for Education to be the Education Commissioner for Birmingham with a specific remit to investigate alleged Islamist infiltration of schools. He became a member of the Board of the Charity Commission in 2013, and is a trustee of the Crimestoppers charity. He has been a Fellow of the Center for Law and Security at New York University and was awarded an Honorary Doctorate in Law by the University of Bristol in 2008.

Her Majesty's Inspectorate of Prisons for England and Wales is an independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention. The role of HM Inspectorate of Prisons is to provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of 'healthy establishments' in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public. The Inspectorate works jointly with other inspecting bodies, in prisons this includes Ofsted focussing on education, the Care Quality Commission and the General Pharmaceutical Council focussing on healthcare, and HM Inspectorate of Probation focussing on offender management.

Inspections assess four areas: Safety (that prisoners, even the most vulnerable, are held safely); Respect (that prisoners are treated with respect for their human dignity); Purposeful Activity (that prisoners are able, and expected, to engage in activity that is likely to benefit them), and; Resettlement (that prisoners are prepared for release into the community, and helped to reduce the likelihood of reoffending). The regular process for inspection involves three stages. The first is the pre-inspection visit which includes the collection of preliminary information and the conduct of a confidential survey of a representative proportion of the prisoner population. The second stage is the inspection visit, where data is gathered and assessed against the published Expectations[1]. Sources of evidence include prisoner focus groups, individual interviews carried out with staff and prisoners, the prisoner survey results, documentation and observation by inspectors. At the end of this the prison is awarded a numeric score for each of the four healthy prison tests, from one ('Outcomes for prisoners are good') up to four ('Outcomes for prisoners are poor'). The third stage is the post-inspection action, including the production of an action plan, based on the recommendations made in the report and subsequent progress reports.

The Inspectorate's work constitutes a part of the United Kingdom's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This Protocol requires signatory States to have in place regular independent inspection of places of detention.

HM Chief Inspector of Prisons is appointed by the Justice Secretary from outside the Prison Service. The Chief Inspector reports directly to the Justice Secretary and Ministers on the treatment of prisoners, conditions

1. Available at http://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/

in prisons, young offender institutions, court custody and other matters in England and Wales as directed by the Justice Secretary. The Chief Inspector also has a statutory responsibility to inspect and report to the Home Secretary on conditions for and treatment of detainees in all places of immigration detention in the United Kingdom.

This interview took place in October, 2020.

JB: What did you see as the role and significance of independent prison inspection during the coronavirus pandemic?

PC: When the lockdown was implemented in March 2020, it was obvious straight away that we wouldn't be able to continue with our normal programme of inspections, but we still had statutory responsibilities to the Secretary of State for Justice to report on treatment and conditions. The UK has international obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This requires there to be independent scrutiny of places of detention. What we needed to do straight away was to find a way in which we could meet those obligations, but in a way that would not do any harm, would not add to risk and would be safe.

The UK has international obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

JB: What steps did you take to adapt the inspection methodology to respond to the circumstances? Did you enhance the access to public health expertise?

PC: In April 2020, we introduced 'short scrutiny visits' (SSV), this was an adapted methodology designed to be safe. These involved two to three inspectors attending establishments, including a health inspector. Each visit took place over the course of a single day, and focused on a small number of issues which were essential to the care and basic rights of those detained in the circumstances. These critical areas included: care for the most vulnerable prisoners and the need for meaningful human contact; support for those at risk of self-harm and suicide; hygiene; legal rights; health care; access to fresh air; contact with families, friends and the outside world; and support and risk management for those being released. We conducted these thematically, so for example we would look at three local prisons, then three young offenders' institutions, and so on. We included good practice in these reports so that we were promulgating this. From an early stage we wanted to ensure we were contributing positively. These were replaced in August 2020 by 'scrutiny visits' (SV). These are conducted in individual prisons and are not full inspections, but they do involve more inspectors visiting establishments for longer. They also involve prisoner and detainee surveys, which were not conducted in the SSV model.

These approaches were developed using health advice on what was safe, and took account of the exceptional circumstances. Our senior health inspectors liaised with the relevant heath authorities. We actually went beyond what was advised. We were conscious that we did not want to be responsible for adding to risk.

JB: How prepared were you for this situation? Did you have contingency plans in place? Had the readiness of prisons for pandemics been part of your inspection process?

PC: Inspections would not specifically have examined pandemic planning, although there would have been an assessment of health services. We are aware that plans exist as prisons routinely deal with outbreaks of infection of one type or another. I don't think anyone can honestly say that they were prepared for something on the scale of the coronavirus pandemic.

In terms of the inspectorate itself, we have our own business continuity plans so we could adapt quickly to the changed circumstances. The inspectorate only has a small amount of office space and most inspectors work from home when they are not inspecting. This meant that although the disruption to our working functions was significant, it was entirely manageable.

JB: Your teams inspected a range of different prisons and initially these were organised around prison type. What were your main findings regarding local prisons, holding people on remand or for short sentences?

PC: Across the board, it is right to recognise how well the prison service did in managing the risk of widespread infection. What we found in all prisons was

that the success was in no small part due to very good communication with prisoners from governors and their teams. Particularly in the early stages, prisoners understood the restrictions that were being placed upon them, there was a sense that 'we're all in this together', and they appreciated what was happening and the reasons for it. That was all very much to the credit of local management. What we did find though was that over time prisoners started to show greater signs of frustration at what they perceived to be the slowness of the relaxation of some of those restrictions, particularly around time out of cell and the suspension of social visits.

With local prisons, it was a very mixed picture. Generally, they were the places where it was most difficult to maintain social distancing. We do recognise the challenges presented by the environment. As so often, it very much depended upon the quality of local leadership. In particular whether leaders aimed to do the minimum required to comply with the restrictions or whether they were looking to be as positive as they could be and do as much as was possible safely. We've seen some prisons where we have been pleasantly surprised. For example, we recently visited Bristol, which had received an 'urgent notification' in 2019, a process where I wrote to the Secretary of State for Justice because I was particularly concerned about the very poor outcomes for prisoners. It was very encouraging to see the energy, drive and determination to improve things there. That is a prison now showing much better outcomes. Similarly, Swansea was another prison that had managed to make improvements through this time. Again, we judged that this was due to active, visible leadership.

The pandemic has brought into even sharper relief issues that already affected women's prisons. Self-harm has always been a real concern; it is high and there is a worrying recent rise.

JB: How did you judge training prisons and high security prisons' responses, where they were managing longer term populations?

PC: In these prisons, education, employment and offending behaviour programmes are really their raison d'etre. These were virtually shut down due to the pandemic. What we have seen, however, is that by and large, given the constraints on time unlocked and the regimes, they have managed well.

JB: What were the particular challenges in resettlement and open prisons where they were preparing people for release? How did they respond?

PC: There has been a significant impact. There was a blanket suspension of release on temporary licence across the open prisons, other than for essential workers. We did see some variation in the interpretation of what constituted 'essential work'. Many offending behaviour programmes and interventions have also been suspended, so it is incredibly difficult for prisoners to make progress through their sentences. There is a lot of concern that this will prejudice or compromise their prospects at parole board hearings.

JB: You visited women's prisons. What was your assessment of the ways in which the needs of women were considered?

PC: The pandemic has brought into even sharper relief issues that already affected women's prisons. Self-harm has always been a real concern; it is high and there is a worrying recent rise. The suspension of social visits was particularly troubling for women and it had an impact upon them. The introduction of video calls was slow, which was also a problem. We went to Eastwood Park in May and we saw women who hadn't been able to see their children either in person or virtually for over two months. We've seen that elsewhere too. I understand the security issues around video calls, but could there not have been a way to find some flexibility for women, with some risk assessment, to be able to speak to their children virtually?

JB: Another group that have distinct needs are people in the youth custody estate. What was your view of how these institutions responded?

PC: It was disappointing to see a blanket cessation of face to face education at the beginning. There were local Directors and Governors who took advice and were sure that they could have delivered at least some face-to-face education safely. For example this happened at Cookham Wood, but then direction came from the centre that this had to stop. For four months there wasn't any face to face education across the children's estate, other than at Parc where they did manage to keep some going. We have had some

children who have been locked in their cells for 22 hours a day for over six months, clearly that is unacceptable.

JB: There were widely reported concerns in the community regarding the disproportionate impact of coronavirus on Black, Asian and minority ethnic communities. Did you observe any significant differences in relation to health or the prison responses?

PC: We haven't got any specific data on health impacts. As part of our visits, we would continue to consider equalities issues, both in terms of perceptions and actual outcomes. We are about to publish a thematic report on the minority ethnic prisoners' experiences of rehabilitation and release planning. This shows that in general, people from minority ethnic groups have poorer perceptions and experiences, but there is not enough being done to analyse and understand why this is the case. There is also a case for having more sophistication in understanding the data. Black, Asian and minority ethnic people are not a single homogenous group, so impact and experiences may vary. There needs to be a much more in-depth analysis of the data and a more nuanced understanding of experiences.

JB: One measure that was taken was to suspend visits by family members to prisons. What was your view of the necessity of this and any alternative means put in place to enable family contact?

PC: The decision was taken initially in a very difficult situation. Later, when restrictions were eased in the community, prisons appeared to be slower to respond. There also remained many restrictions on visits including limited time, physical contact was curtailed, children sometimes were not allowed, there was no crèche or toys. In some cases we have also seen some quite punitive responses when a child has touched their parent. On some of our inspections, some prisoners said that the experience of visits was so difficult that they had asked their families not to visit because it was so distressing. The take up has been low, for example when we inspected Erlestoke, only two of the twenty eight places on social visits had been taken up on the day we were there. It is more difficult in some places than others, but many prisons have outdoor spaces, so could use not have been made of that?

On some of our inspections, some prisoners said that the experience of visits was so difficult that they had asked their families not to visit because it was so distressing.

The lack of data makes it difficult. Last week I was told 121 prisons had made social visits available. That is fine at a high level, but what is actually happening? I am always asking for granular data, trying to understand the reality of what is happening, but that is simply not available. The same applies to the video calls. Last week the Prisons Minister wrote to a number of stakeholders, including myself, saying it was excellent that most prisons now had this and that 24,000 video calls had been made. This sounds very good, but in reality, that means that on average one prisoner in three has made one call over the last three-months.

JB: Some people have argued that the period of lockdown has improved safety and that some people in prison have experienced isolation positively. In contrast, others have expressed concerns about the mental health effects of isolation. What were your findings about the experience of people in prison?

PC: This narrative that people are better off when they are locked in their cells 23 hours a day, is frankly disgraceful. It is a counsel of despair to suggest that prisoners cannot be kept safe unless they are held in conditions that amount to a breach of Article 3 of the European Convention on Human Rights. If you have to keep people in prolonged solitary confinement to keep them safe, then that is a grotesque admission of despair. Of course, it will always be possible to find individuals who will say that they are happy to be locked up. There are plenty of people who self-isolate for a variety of reasons, including that they perceive or are actually under some level of threat. Prisons have always had to deal with that. To move from that to saying that all prisoners are safer by being locked up for that period of time, is just not right. In relation to violence there was a levelling off or even a decline in the early stages of the lockdown when there was this sense of common purpose, but that has long passed now.

Without a shadow of a doubt, what we are seeing now is a decline in mental health quite broadly. The most acute cases are being dealt with, but the broader picture is worrying. For example in our survey at Swansea, 79 per cent of the prisoners told us that they were struggling with their mental health. We sometimes see high figures, but nothing like that. We are seeing this everywhere. We visited Dartmoor last week, where the men have been locked in their cells 23

hours a day since March. Although staff and prisoner relationships there are good and the place is clean, it is not sustainable in the long term.

There needs to be more planning for the response in the longer term. We are now entering a second wave and I am hearing that in some places this will result in the restrictions from the first wave being re-imposed. I have been urging HMPPS to think more broadly. I'm not suggesting anyone does anything unsafe, but people should be encouraged to see if there are ways that things could be done differently but safely.

JB: What did you observe regarding the response of staff and the leadership in prisons?

PC: In general it has been remarkable. There has been a lot of concern about what could happen in prisons and indeed there have been outbreaks in other parts of the world. The fact that staff have kept coming in and have done what they could within the restrictions, is to their credit.

We have seen variable practice around social distancing, but overall it is 'well done' to the staff for what they have done in these difficult circumstances.

JB: When the peak of the pandemic started to pass and the restrictions in the community were gradually eased, how did you assess the response of prisons?

PC: What we have seen is quite a lot of frustration at a local level about the slowness at which the restrictions have been eased. There is a degree of nervousness of trying to do things differently. We have had some governors and teams say that they are afraid of being seen as 'maverick' or reckless when actually what they are trying to do is match their response to local circumstances. We have heard many times that people are frustrated at the centralised way in which this has been managed and many teams say that they could have done more and more quickly, perfectly safely.

There has got to be some thinking about balance of risk. Yes the risk of infection had to predominate at the beginning, but that risk has to be balanced against other risks, including wellbeing. Some people are saying that the second wave takes that off the table, but I think that makes it even more relevant, because it is not sustainable to keep people locked in their cells for 23 hours a day indefinitely. There is going to have to be a change at some point. As well as the health expertise prisons draw upon, there should also be advice from behavioural scientists about the effects of extremely restrictive regimes. I'm not proposing anything unsafe, I am simply highlighting that the risks are more than simply viral infection and that those wider risks need to be understood and considered in the balance.

JB: Is there anything you have learned from the pandemic response that you believe will shape how you operate in the future as an inspectorate, or how prisons should operate?

PC: We will certainly consider the lessons about inspection practice. We have been pleasantly surprised, particularly from the scrutiny visits, with the level of detail we have been able to gain in a short space of time. There may be lessons to learn from that about how we can broaden and deepen our data collection when we return to full inspections.

For prisons, if there is a lesson it is how important purposeful detention is. When the sense of purpose falls away and people are not able to access work and education, or make progress through their sentence, the sentence of the court is fulfilled, but little more. That is certainly not working in the public interest because there is no way that people held in these conditions for a long period are going to re-emerge from the prison at the end of their sentence less likely to reoffend. We have to make sure that the negative narratives don't predominate and the focus must be on improving the opportunities for rehabilitation and purposeful activity.

JB: What are you most positive about in the response to the pandemic?

PC: It has got to be the people, the way they have responded as human beings in the most difficult circumstances. By and large, what we have seen is people who are good public servants who want to do the best for the people in their care[2].

2. Further detail of the Inspectorate's findings from prisons can be found in the thematic report thematic *What Happens to Prisoners in a Pandemic?* Which was published on 11 February. That can be found at https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/what-happens-to-prisoners-in-a-pandemic/