

Barriers to engagement: Scrutiny gaps in Irish prisons

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Abstract

Prisons in Ireland and across the world are subject to a growing range of scrutiny bodies. However, even as such bodies strive to develop best practices there remain inherent challenges related to how best to generate meaningful knowledge about the prison experience. Through analysis of interviews with prisoners in Ireland, this paper explores the barriers to engagement which prisoners face when choosing (or not) to interact with prison oversight mechanisms. These barriers include low expectations of prisons and the ability of prisons to change, low awareness and trust in oversight bodies and their role in protecting prisoners' rights, as well as concerns about the consequences of speaking up and what is worth speaking up about. This final barrier termed wasted agency, can place a limit on when and what prisoners are willing to speak to bodies about and what is considered worth taking a risk for. Recognizing the role these barriers play in who and what is referred to prison oversight bodies can shine a light on scrutiny gaps which may arise and differences in communication between oversight bodies and those they are intended to protect.

Introduction

There has been a growth globally in scrutiny in prisons. One form of scrutiny which will be discussed in this paper is that of prison inspection and monitoring. Inspection and monitoring bodies are designed to protect the rights of those in prison through gathering information on the current situation in prison and scrutinising treatment and conditions according to domestic and international legislation and rules – often

based on human rights law and standards.¹ This paper explores some of the factors which shape prisoners' awareness and expectations of these bodies, as well as the experiences they had with them. Specifically, it will identify barriers to engaging with inspection and monitoring bodies due to factors inherent to the prison environment, such as prison culture. In particular, relationships and trust building in prison, as well as expectations of the prison among the prisoner population will be explored. As outlined by Merry, 'in order for human rights to be effective ... they need to be translated into local terms and situated within local contexts of power and meaning.'² This paper sets out the context in which human rights protection in prison operates. Additionally, this paper explores the factors which can create barriers to accessing the inspection processes and limit the awareness of rights protecting bodies among prisoners. The increasing bureaucracy of monitoring and inspection bodies can act as a barrier to those who have had negative past experiences with authorities or who may not be able to engage due to literacy issues.³ Key to this paper is the idea that inspection and monitoring bodies should be accessible to those in prison.

Ireland

Ireland is a member state of the Council of Europe and the United Nations, which both have rules for the treatment of prisoners.⁴ Ireland has a prison population of 4,148, with prisoners held in 12 prisons across the country.⁵ Ireland has several different bodies which carry out visits to Irish prisons. Each prison has a Visiting Committee, which consists of 6 to 12 members of the community who can visit prisons regularly, write annual reports and listen to prisoners' complaints.⁶ Additionally, Ireland established on a statutory basis in

1. For example, the European Prison Rules 2020 and the UN Mandela Rules.
2. Sally Engle Merry, *Human rights and gender violence: Translating international law into local justice* (University of Chicago Press 2009) 1.
3. Christopher Hood, Oliver James, George Jones, Colin Scott and Tony Travers, *Regulation inside government: Waste watchers, quality police, and sleaze-busters* (Oxford University Press 1999); Ben Crewe, 'Depth, weight, tightness: Revisiting the pains of imprisonment' (2011) 13(5) *Punishment & Society* 509.
4. European Prison Rules 2020; the UN Mandela Rules.
5. Irish Prison Service, *Daily Prison Population 1st July 2022* available at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/01-July-2022.pdf
6. Prisons (Visiting Committees) Act 1925.

2007 an Inspector of Prisons. The Inspector of Prisons is responsible for inspecting all the prisons in Ireland, writing annual and thematic reports, investigating deaths in custody and has oversight of the complaint procedure. Ireland is also subject to visits by the Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) of the Council of Europe. Work is also underway to ratify the UN Optional Protocol to the Convention against Torture and establishing a National Preventative Mechanism.

Study

The present paper draws on a broader study which examines the experiences of people in prison of oversight through complaints, inspection and monitoring, and the courts. The analysis presented here examines the barriers to engaging with inspection and monitoring bodies in Ireland.

The study consisted of interviews with 45 prisoners, located in three prisons in Ireland. Participants were male, currently serving a sentence, and had been in custody for at least one month at the time of the research. Participants were randomly selected from those serving a sentence on the first day the researcher arrived at the prison. This involved randomly generating numbers based on the number of people in custody and matching these to the list of those individuals. Those identified were approached by the researcher and informed of the study. An information sheet was provided, as well as an opportunity to ask questions. Potential participants were given a minimum of 24 hours to consider whether they would like to participate, and then approached for a second time for interview. The data was gathered and transcribed by the first author, with frequent meetings and discussions with the second author during the analysis stage, to discuss and review the codebook and themes in the data. The interviews for this paper were analysed thematically using NVivo software.

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Findings

The study shows that the prison environment and penal culture can create barriers to engaging with inspection and monitoring bodies. While some prisoners may deliberately choose not to engage with inspection and monitoring bodies, due to the fact that at times they were viewed as another arm of the prison service or a layer of bureaucracy to prevent prisoners from accessing decision makers, others were simply not aware of the existence of bodies to protect their rights, or what their rights even were.⁷ Previous research published from this study highlighted low levels of awareness and familiarity with these bodies among certain groups of prisoners.⁸

Three key findings are considered here. Firstly, prisoners' expectations of prison life and how this shapes their identification of problems and engagement with monitoring and inspection bodies. Secondly, barriers to engagement as a result of aspects of prison culture, such as reliance on key relationships which can hinder prisoners seeking to access rights protection. Finally, the concept of trust (or lack thereof) in the prison context will be discussed and how low trust environments, combined with low awareness of the existence and activities of monitoring and inspection bodies, can in turn limit the opportunities to engage with those bodies. These findings drawn together highlight a disconnect between those in prison and the objectives of those scrutinising prisons.

What Matters in Prison: Expectations

Prisoners' expectations of their rights and treatment in prison can have significant implications for how prisoners' engage with monitoring and inspection bodies. Participants in the current study had low expectations of their rights, as well as low expectations of prison conditions and in some cases a low sense of being worthy of rights. In prison, while the concept of

7. Sophie van der Valk and Mary Rogan, Experiencing human rights protections in prisons: The case of prison monitoring in Ireland (2021) *European Journal of Criminology*, 18(1), 101–119.

8. Sophie van der Valk, Eva Aizpurua and Mary Rogan, Towards a typology of prisoners' awareness of and familiarity with prison inspection and monitoring bodies (2021) *European Journal of Criminology*, 0(0). <https://doi.org/10.1177/1477370821998940>. In particular, awareness and familiarity was higher among Irish nationals, while those serving shorter sentences were less likely to know about the bodies. Additionally, those with lower confidence in staff had higher awareness and familiarity with some of inspection bodies and those who considered rights in prison were respected had higher awareness of the bodies. Finally, having used the complaint system was linked to awareness and familiarity with the inspection and monitoring bodies.

rights may be visible in the legal framework and official guidelines of the organisation, the permeability of these concepts into the everyday life of both staff and prisoners may differ. However, as was clear in the current study, the scope of rights and right protection in prison was limited among the majority of participants.

Prison involves infringement on a vast range of rights beyond loss of liberty due to the interdependent nature of many rights. As noted by one participant, the range of rights which are impacted by imprisonment is beyond many people's imagination until they experience it:

if you have never been in prison before you would have no reason to ever have those thoughts or to even imagine what it is like really in prison you become aware of how your rights can just be completely taken away...

Participant 01

As demonstrated by this quote, many rights are taken for granted on the outside which come into sharp focus in prison, where a prisoner is heavily reliant on staff for daily needs and has little control over basic decision making such as contacting family members or even, in the case of prisons without in-cell showers, when to go for a shower. This sense of reliance or lack of autonomy and sharp deprivation of rights upon imprisonment is emphasised in international research⁹ and was experienced by many prisoners in this study. This can lead to infantilisation of prisoners as decisions they may have been making for years are taken out of their hands and can have an impact on their sense of self. The degree to which prisoners accepted those decisions varied and some prisoners outrightly resisted prison control over their decision making, while others took small actions to exercise agency over their daily lives, such as closing their own door a few minutes before evening lock up. Other participants spoke about collectively complaining about issues or being persistent in speaking up to staff members about their needs.

Prisoners in the current study often felt they had no rights in prison: 'No rights, I haven't got any rights.' (Participant 07), while others had a very limited view: 'You have a right to your hour of exercise, that's all you have really' (Participant 06). There was also a sense that

rights could be easily taken away and were seen as privileges which the prison had full control over, as illustrated by Participant 06:

[T]he only thing they can't take off you is your hour exercise and your meals. Everything else they can. You can get everything but then everything can be taken away from you and the only thing they can't take away from you is the food and your hour of exercise basically, so you kind of have to work from basic up to enhanced.

This sense of having no rights or the ability of the prison to take away rights is a sharp contrast to the significant reform of prison policy and legislation concerning the treatment of prisoners which has taken

place in recent years. In general, and as with Karamalidou's research,¹⁰ prisoners did not see rights in prison as legally protected beyond a narrow conception such as an hour of exercise and the meeting of basic needs such as food and hygiene. Additionally, many participants did not feel that rights were respected in prison and asserting rights in prison is not something participants felt able to do. This suggested that rights expectations among prisoners are low and there can be challenges in speaking about rights when

information about their entitlements to them is lacking. Some felt that the institution was unwilling to share information about rights and rights protecting bodies and that looking for information on these from staff was a waste of time and could draw unwanted attention.

Some participants expressed a lack of control over their own circumstances and what they received while in custody leading to a sense of frustration, which may contribute to disengagement. This feeling is exemplified by the following quote:

No rights, I haven't got any rights.... I don't even look at anything like that I just ... I just do what do be asked of me, it is better that way, you know what I mean. If you are having problems, it is better than roaring and shouting at them yeah or snapping or ... sometimes you feel like doing it but there is

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9. Ben Crewe, *The Prisoner Society: Power, adaptation and social life in an English prison* (Oxford University Press 2009).

10. Anastasia Karamalidou, *Embedding Human Rights in Prison: English and Dutch Perspectives* (Palgrave Macmillan 2017).

no point in it, you are not going to get anywhere doing that, you know.

Participant 7

This participant also highlights some of the concerns prisoners had about speaking up and being vocal about their rights.

Additionally, there was a lack of clarity about rights in prison among participants and, in the case of some participants, they relied more on a sense that something 'felt wrong', rather than having concrete information on his rights. Participant 29 noted that he did not 'want to get too deep into it', which suggests that reflecting on what goes wrong in prison can be difficult for a prisoner to deal with, especially when there is no hope of changes being made or being successful in resolving problems. This corresponds with Jewkes' work, which describes how prisons are hypermasculine environments where surviving prison is about having a tough front.¹¹ Being asked to lift this front, even temporarily, to reflect on your experiences and identify issues can be a difficult task.

This study shows that the expectations prisoners have of prison can impact on what information they feel is necessary to share with an inspector or what they might see as worth complaining about, as emphasised by Participant 40:

I think prisons is meant to be bad like, so you won't come back... I think this is the best we are ever going to get, you know, we have a toilet now like. I remember when we were in the old jail everyone was urinating and faeces into a bucket, yeah and cleaning it out like that was bad like and that was only a few year ago. Now we have toilet, shower, like we are allowed X-boxes if you are on the enhanced wing. What more can you get like. I don't think you can get anymore...

As is evident from the final line of this quote, and in line with Sexton's research on penal consciousness,¹² prisoners' expectations are based on prior experience and their perceptions of what prison should be like.

Meeting the basic needs of those in prison was seen by this participant and others as all that could be achieved in prison. The wider rehabilitative mandate of prisons evident in the international and domestic frameworks, as well as the standards of the inspection and monitoring bodies, was not reflected in all participants' mindsets of what they expected of prison. As emphasised by Sexton, prisoners' expectations are shaped by subjective experiences and thus their identification of issues in prison are shaped by those expectations.¹³ These minimal expectations of what prison was supposed to be like, could limit the interactions between prisoners and monitoring bodies. This could in turn have implications for what monitoring and inspection bodies may in fact be able to

identify as problems in prisons, given the key role of prisoner engagement in shaping reports.

These findings suggest a disconnect between how those in prison expect and accept prison to be and the rhetoric and concerns of those carrying out prison inspections. Prisoners may not be concerned with the same matters as inspectors, with a strong focus in interviews on specific problems such as family visits or access to healthcare rather than matters pertaining to prisoners' specific needs or compliance with human rights norms in general. This is expanded on below when discussing wasted agency and

the situations which those in prison felt were worth using their limited agency on. A lack of awareness and clarity around how inspection is supposed to work created a sense of pointlessness to engaging with inspection bodies. As discussed by one participant, he felt that the Inspector, who he had met, made unrealistic promises when speaking to prisoners and the lack of follow up created a sense of distrust in the office more broadly and possible future engagements:

[The inspection body] made promises, [they] did make promises to us that [they] would get this stuff sorted out, but they didn't.

Participant 09.

As will be explored further below, engaging with those who come into prisons may in itself be

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11. Yvonne Jewkes 'Men Behind Bars: "Doing" Masculinity as an Adaptation to Imprisonment' (2005) 8(1) Men and Masculinities 44.

12. Lori Sexton, 'Penal subjectivities: Developing a theoretical framework for penal consciousness' (2015) 17(1) Punishment & Society 114.

13. Lori Sexton, 'Penal subjectivities: Developing a theoretical framework for penal consciousness' (2015) 17(1) Punishment & Society 114.

challenging and seen as taboo. The environment is such that experiences of relevant and positive change is close to non-existent.

Prison Culture: a lack of trust and dependent relationships

Prison culture was a recurring theme in the interviews in relation to prisoners' attitudes to oversight and potential concerns about the consequences of speaking up. This was linked to the low trust nature of the environment, relationships in prison, as well as survival tactics. Previous research highlights prisons as low trust environments.¹⁴ This can make it difficult for prisoners to build relationships and they may also be less likely to risk engaging with authorities or monitoring and inspection bodies, especially when they know little about them. Hardin notes that

'[p]eople who are rarely trusted do not have the opportunity to develop trustworthiness, and cannot be expected to respond with alacrity when trust is offered to them. This is one of the damaging elements of suffering from long-term distrust: in such an environment, it makes little sense to develop traits of trustworthiness, if these will go unrecognized. This in turn makes the habitually distrusted harder to trust, and the downward spiral continues.'

Prisoners may also lack self-trust, whereby they are unsure whether to trust their own judgement in placing trust in others.¹⁵ Prior experiences of trusting others may have been misplaced and thus created a vacuum of trust for the prisoner. Hawley discusses the challenges of trusting for those who have not been trusted themselves in the past, noting that those in 'positions of privilege may find it easier to take a chance with trusting, simply because the risks and stakes are lower'.¹⁶ As emphasised by Calavita and Jenness, prisons are high stakes environments, therefore the cost

of misplaced trust can be high and prisoners have scarce resources they are keen not to lose.^{17,18} As highlighted by Participant 21

'I suppose you could get a prisoner to do it [speak to inspection bodies] yeah but I wouldn't have nothing to do with it cuz they wouldn't listen to me. That's the truth.'

His prison experiences made him feel that speaking to an inspection body would not be worthwhile, as he would not be heard. While this participant did not feel as though he would be perceived as worth listening to, other participants suggested that certain groups of prisoners, such as those serving life sentences would

have a lot to say and might be perceived as more legitimate. This demonstrated a sense that some prisoners were perceived as more worthy of voicing their experiences than others.

Participants in the current study spoke about the lack of trust they had in prison as a result of prior experiences or their experience with authorities more broadly. As noted by Participant 20: *'I wouldn't trust anyone in here to be honest.'* Another participant noted the importance of clear independence in building trust and the fundamental need to trust a body when providing them with sensitive information such as a complaint:

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It's very hard to trust people now in a prison system ... because this fella could be all nice but then you know he's going back to this person and you know things could be [said differently]. I don't know like, you want to be able to trust someone you know like, people in prison don't really trust, you know what I mean. It's very hard to trust someone you know that kind of way like because you have seen it all before like, people charging this fella and sending him to a different jail, you know things like that, it's very hard.

Participant 45

14. Ben Crewe *The Prisoner Society: Power, adaptation and social life in an English prison* (Oxford University Press 2009).
15. Russell Hardin, 'Trustworthiness' (1996) 107(1) *Ethics* 26.
16. Katerine Hawley, *Trust: A very short introduction* (Oxford University Press 2012) 18.
17. Kitty Calavita and Valeria Jenness, *Appealing to Justice: Prisoner Grievances, Rights and Carceral Logic* (University of California Press 2015).
18. Katerine Hawley, *Trust: A very short introduction* (Oxford University Press 2012) 19.

A lack of trust can create a barrier to speaking to external bodies, especially when there is limited information on them or, as in the case of some of the monitoring and inspection bodies, they are not perceived as independent from the prison service itself.¹⁹ Despite this, some participants were willing to engage with some inspection bodies, even where they knew little about them and had limited expectations about what they could actually achieve. The cost benefit analysis of the risk involved in seeking out and choosing to engage with inspection bodies was altered in this case and some may be willing, on a one off basis at least, to forego the knowledge usually necessary to make this assessment, especially if a pressing issue was concerned.

A key feature of relationships in prison is the prisoner code of not telling on other prisoners, referred to as “ratting” by some participants. Given the heavy reliance on relationships in prison and the complications that may arise from damaging a relationship, it is unsurprising that seeking out information on and engaging with monitoring bodies is low on the list of priorities for prisoners. Carrabine states that imprisonment consists of a situation where ‘prisoners are confined against their will, with people they would normally not choose to be with, in circumstances they can do little to change and are governed by custodians who police practically every aspect of their daily life.’²⁰ This feeling of powerlessness and reliance is clearly evident in the prison culture and informs the willingness to seek out information. A willingness to seek out information and to complain depended on what was at stake, with family visits frequently mentioned as a trigger for when action needed to be taken.

In addition to relationships with staff, prisoners are reliant on one another to survive prison life and relationships with other prisoners can mediate some of ‘the pains of imprisonment’ as outlined by Sykes. Speaking to external bodies was viewed by some participants as suspicious behaviour that might make

other prisoners distrust you or think that the complaint was about them and could bring trouble. Given the importance of these relationships, prisoners may take this into account when considering engaging with monitoring bodies. Is the risk of engaging worth damaging a vital prison relationship? Those who used the complaint system were not always viewed kindly by other prisoners, referred to by Participant 38 as “*little weasel people*” and some may be suspicious of what a prisoner is complaining about.

Speaking to external bodies was seen by some as counter to strategies of survival in prison of keeping one’s head down. Previous prison research, such as that conducted by Jewkes, discusses how prisoners adapt to the prison environment to survive²¹ and some of these

adaptation techniques can act as barriers to engaging with rights protecting bodies. This theme was also present in the current research. For example, Participant 13 explained that:

....in prison you have to have your wires around you like, you know, you have to watch what you are saying.

As highlighted by this participant, he survived prison by avoiding disclosing information about himself, especially to those he did not trust. This practice of self-protection may be difficult to

set aside, even momentarily, in favour of willingly and actively disclosing vulnerabilities to monitoring and inspection bodies. Keeping your head down was seen by the majority of participants as the best way to do your time. This idea of keeping your head down was also found in Behan’s research and his discussions with prisoners on engaging with oversight bodies.²² As discussed by Behan, prisons were about creating ‘compliant prisoners’ rather than active citizens, through encouraging obedience, conforming to norms and patterns of behaviour.²³ Prisons were focused on achieving compliance ‘where individuals do not act or do as they felt, and ‘choices suppressed or pacified lead only to organisationally determined identities; one becomes what the environment dictates.’²⁴ For

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19. Sophie van der Valk, Eva Aizpurua and Mary Rogan, Towards a typology of prisoners’ awareness of and familiarity with prison inspection and monitoring bodies (2021) *European Journal of Criminology* 0(0) <https://doi.org/10.1177/1477370821998940>.

20. Eamonn Carrabine, ‘Prison Riots, Social Order and the Problem of Legitimacy’ (2005) 45(6) *British Journal of Criminology* 896, 897.

21. Yvonne Jewkes, ‘Men Behind Bars: “Doing” Masculinity as an Adaptation to Imprisonment’ (2005) 8(1) *Men and Masculinities* 44.

22. Cormac Behan, *Citizen convicts: Prisoners, politics and the vote* (Manchester University Press 2016).

23. Cormac Behan, *Citizen convicts: Prisoners, politics and the vote* (Manchester University Press 2016) 173.

24. Cormac Behan, *Citizen convicts: Prisoners, politics and the vote* (Manchester University Press 2016) 173.

participants in the current study, by limiting interactions with others – especially outsiders – they were engaging in self-preservation strategies to protect themselves from unwanted attention and avoiding unintentionally aggravating staff, for example as highlighted by Participant 39 *'Just get a job, keep the head down and keep doing what you're doing.'*

Prisoners spoke about keeping their head down as a way of managing prison and maintaining relationships with staff members. As noted by one participant: *'They do their thing, I do mine'* (Participant 7) when he was asked whether he would engage with the inspector if he came into the prison. The challenge in being heard and getting your point across is evident in other areas of research, including a study conducted by Crewe, who notes that issues in prison may be seen as small things outside of the prison context.²⁵ It is important for oversight bodies to understand the significant restrictions placed on those in custody and the relevance – also symbolically – of even more minor incidences (as seen from the outside). In the current study, privacy and door banging was referred to by some participants as a way of staff to either show respect or as a form of reprisals against those they had issues with. This can be seen in the quote below:

There are certain times you would say to yourself this is wrong or like you feel like (complaining), but I haven't done it, you know. You could make trouble for yourself in here and to me the quietest way is the best normally.

Participant 29

Despite limited awareness and personal interactions with monitoring and inspection bodies, participants were sceptical of the inspection process and how inspections were carried out. There was also a sense amongst participants that limited changes were possible in the Irish Prison Service and that the service was unwilling to act on recommendations, especially in the absence of enforcement powers. Despite the growing push for oversight in prisons, the practical benefits to participants was not always clear. Some questioned the utility of a body who could not assist

with individual cases, or lacked enforcement powers to make changes. There was a sense that discussions about inspections in prisons (by inspecting bodies) were at times far removed from the reality of prison life and the need for immediate action for individuals in their experiences was not reflected in the timelines evidenced in inspection reports. Prisoners were unlikely to speak about rights as a collective or general problem or using the language of rights, instead they use examples of concrete experiences of where they felt wronged. The impact this has on how they would engage or bring issues to the attention of an oversight body needs to be considered and building trust with those in prison. This could be achieved through providing easier access to inspectorate reports, visibility

of inspection teams in key areas and allowing prisoners to focus on themes which are of concern to them such as family visits. Through building a clear understanding of the mandate of inspection bodies and the work of the body, frustrations and distrust with the bodies could be addressed.

Some felt that inspection was a fruitless exercise which would result in limited changes within the prison, or at least changes that would be long lasting and have a deep impact on the system. Painting the walls and sweeping the floors were described as a quick facelift but one unlikely to deal with the longer-term concerns prisoners faced. As emphasised by Participant 31 physical repairs

were not necessarily the problems prisoners were concerned with:

Well they can listen to them but sure who is going to complain about a broken window. When someone comes in, when them windows are closed, them cells are like saunas. So you would want a hole in your window.

There was a sense amongst some prisoners that inspection bodies would not be able to understand the environment and issues which prisoners may have. As highlighted above, broken windows, which may on the surface seem like something that needs to be fixed, was actually something that some prisoners welcomed. Including the voice of the prisoners much more

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25. Ben Crewe, *The Prisoner Society: Power, adaptation and social life in an English prison* (Oxford University Press 2009).

explicitly in inspection practices and reporting to try to get a fuller understanding of the environment is important to ensure that inspectors' recommendations will not only benefit those in custody, but also avoid negatively impacting their everyday lives. As noted by one participant (38) in response to the question as to whether inspections could make prisons better:

'They probably could yeah. They could probably make them worse than as well.'

Researcher: Okay, why do you think that?

I don't know, just they could change something that no one wants changed, do you get me.'

This participant was sceptical of the inspection process and whether the changes that they might eventually bring about would be something that would actually benefit them in prison. This is linked to the findings previously discussed that monitors or inspectors might not actually understand the prison and the problems which prisoners face due to their lack of lived experience and distance from the prison. Prisoners definitely have that experience, which obviously dampens their motivation to engage.

Implications on Engagement: Wasted Agency

As noted by Behan, 'imprisonment confines, restricts and prevents an individual from the freedom of choice necessary for agency, building trust, developing social capital and engaging in networks of engagement essential for robust citizenship.'²⁶ Similarly, participants in the current study experienced challenges in building trust and had limitations placed on their agency. As discussed by Crewe, these restrictions increase the significance of staff prisoner relationships in accessing services available in prison.²⁷ These limitations can create challenges in engaging with monitoring and inspection bodies, especially in instances such as those set out above, where prisoners

have limited information on the existence of monitoring and inspection bodies and how they operate. In situations where people have limited agency and concerns about exercising the little agency they retain, care will be taken in deciding when to use it. Prisoners may prioritise interactions where they have a clear understanding of the benefits and risks of engaging or if they have serious concerns about specific issues, which have increased significance for them. As noted by Participant 19, 'I try push the line as far as I can with the visits and stuff'. Family contact was a key area where participants were more likely to speak up or complain when a problem arose, indicating that this issue is clearly important to those in prison. Additionally, there was a sense that family visits and contact were something which the prison should not overly intrude on as family members had not done anything wrong and therefore were worthy of protection. As with, concerns about healthcare this was at times about preserving life outside of the prison walls. This may result in issues raised by the inspector as being perceived as minor or not as important being overlooked or not perceived as worth wasting agency on.

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The concept of 'wasted agency' therefore is based on the underlying concerns of those in prison and the perception of how far you can push the line or exercise your agency before the risk of reprisals increases beyond what is acceptable to the prisoner for the right at issue or one's energy is burnt out. Additionally, due to the disconnect between the everyday experiences of prison and the focus on standards in prison inspection and monitoring, prisoners have little incentive to engage and no faith in the system to give them what they want. They perceive of it as a waste of their energies. Not speaking up is also a form of self-protection from being repeatedly refused one's request or feeling that one's sense of worth is being undermined. As set out above, when choosing to engage with monitoring and inspection bodies, having relevant and actionable information on the risks and benefits of interacting are key especially for those in low trust environments. However, in the case of participants in this study there was limited information on the various bodies and how they operated, and

26. Cormac Behan, 'No longer a 'collateral consequence': Imprisonment and the reframing of citizenship' (2020) *European Journal of Criminology* 1, 11.

27. Ben Crewe, *The Prisoner Society: Power, adaptation and social life in an English prison* (Oxford University Press 2009).

participants therefore found it difficult to assess the benefits of an interaction. As noted by Participant 31 'I would only go to him if I know ... if I had a good chance of winning my case.' Speaking to someone who you did not know much about or about an issue that you perceived as minor could be felt as a waste of time and resources in a limiting context such as a prison. Prisoners may not want to waste an opportunity to speak up, when the benefit is unclear and especially in light of the perceived risk to relationships deemed crucial for survival and risks of other forms of reprisal from, for instance, the staff. These concerns are also evident in the literature, as noted by Stanley, 'rights are ... about relationships with people.'²⁸ This was evident in the current research from discussions with prisoners who learnt who to approach for help or had certain officers they avoided asking for anything. Relationships with other prisoners and staff in prison were seen as key to accessing rights and receiving information on rights.

This reiterates the importance of ensuring those in prison have a clear understanding of the bodies' mandates and how they operate in deciding whether to use their limited agency on an interaction with a monitoring or inspection body. Drawing on Behan's work, this highlights the finding that if trust decreases, either through misconceptions – on both sides - or lack of knowledge to engage, engagement decreases resulting in a drop in legitimacy as prisoners' views are not perceived as being heard in the inspection and monitoring processes.²⁹ Prisoners make calculations in deciding when to act and, in the absence of clear knowledge of these bodies, this assessment is done based on prior experiences or information available to prisoners. These findings clearly reveal the risks of engaging with different monitoring and inspection bodies.

Conclusion

Inspection and monitoring in the prison context face a range of challenges. These findings highlight the potential disconnect between those in prisons and the goals of inspection and monitoring. The expectations of what prison life is and ought to be can differ significantly between those in prison and the standards set in legislation and by inspection and monitoring bodies. Drawing on their own expectations, creates a barrier in seeking to engage and communicate with inspection and monitoring bodies. Prisoners may perceive situations as good as they expected and almost impossible to better - due to their own perceptions of

what prison can and should be like, as well as their understanding of their rights in custody. This has implications for the topics which prisoners may perceive as necessary to bring to the attention of inspection and monitoring bodies. In addition to this, those who perceive prison as their home may be unwilling to jeopardise their sense of a self-place for matters which may be perceived as minor or too risky to draw attention to. Therefore, it is important that inspection and monitoring bodies play a role in building awareness of rights in prison and address concerns about reprisals when carrying out their work. This could be achieved through recruiting those with custodial experience to inspection bodies or having open discussion groups with those in prison when carrying out inspections to allow space for issues which may not be on inspection agendas.

Engaging with inspection bodies and speaking up about rights can be perceived as an antithesis to prison culture and the need to keep your head down and stay out of trouble. This is particularly the case when those in prison are unsure about the role of the bodies and have limited information on who they are being asked to engage with. Providing information to prisoners throughout their time in prison on bodies can help to ensure that knowledge on these bodies is retained. Additionally, as discussed by Participant 36 in the study having access to reports made an impact on how he saw the Inspector.

'... the Inspector did spot a few things in [the prison] that needed sorting out like, you know and he included it in his report like, which I thought made a big difference.'

While prisoners are not necessarily the target audience for reports by inspection and monitoring bodies, providing access to the report may help promote legitimacy of the process among the prison population and dispel perceptions that the process is guided by the prison service and only interacts with certain prisoners or areas within the prison. Providing a short, accessible summary is one means of building knowledge of the role and work of the inspector and ensuring prisoners feel heard by the process. In scrutinising the prison, it is important to include the experiences of a diverse range of individuals who are present in the environment on a daily basis. The potential gaps set out in this paper, highlight the challenges of scrutinising an environment of low trust, low rights expectations and awareness and with a challenging culture.

28. Elizabeth Stanley, *Human rights and prisons: A review to the Human Rights Commission* (Human Rights Commission Auckland 2011) 26.

29. Cormac Behan, *Citizen convicts: Prisoners, politics and the vote* (Manchester University Press 2016) 172.