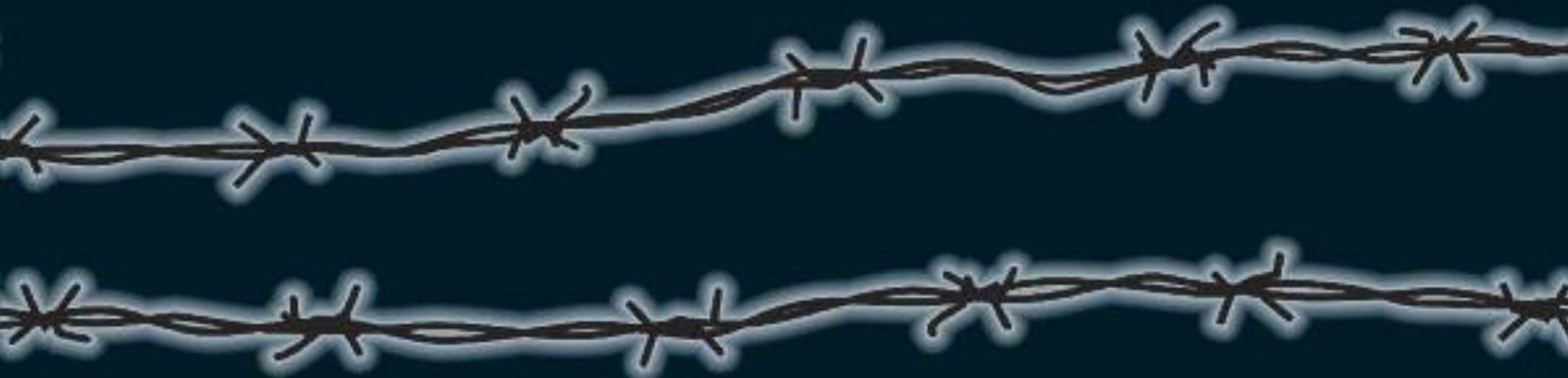


# PRISON SERVICE JOURNAL

March 2013 No 206

Ethnicity Religion  
Gender Race  
Sexual Orientation  
Age  
Multiculturalism



# Slipping off the equalities agenda?

## Work with LGBT prisoners

*Dr Peter Dunn is an inspector with HM Inspectorate of Prisons and a Visiting Fellow of the Mannheim Centre for Criminology, London School of Economics and Political Science.*

*Once I was comfortable with saying 'I am gay' out loud I came out to my personal officer on the wing. That was not such a good idea as he was homophobic and told the whole wing. I cannot explain the hatred that some prisoners and staff had for me. Every day I was told I am a disgrace to my culture and that I should kill myself. Unfortunately I got very depressed and tried to kill myself, but thankfully I didn't succeed. I still get threatened every day but I will never let them get to me again. I am a gay man and I am proud of it no matter what they do to me. I will never be ashamed of how I am again.*

(Pedro, a gay prisoner writing for *Bent Bars Newsletter*<sup>1</sup>)

### Introduction

**How representative is Pedro's experience? With the impetus provided by the Equality Act 2010 and social changes that have reduced discriminatory attitudes towards lesbians and gay men in British society,<sup>2</sup> we might think such extreme and brutal homophobia is becoming rare. But as I shall show, Pedro's situation may not be uncommon.**

Firstly, it may be helpful to briefly describe the context in which this article sets out to explore the issue of homophobia and transphobia in prisons.<sup>3</sup> In 2011 the National Offender Management Service (NOMS) gave the governors and directors of prisons in England and Wales more discretion than they had hitherto enjoyed about how they manage diversity and equal opportunities by issuing a new Prison Service Instruction, PSI 32/2011 *Ensuring Equality*.<sup>4</sup> Several earlier orders and instructions concerning equalities were withdrawn. The PSI reminds prison staff that they have responsibilities to eliminate discrimination and promote equality. It contains fewer mandatory actions than the instructions it replaced. At the same time, monitoring of prisoners' sexual orientation has also been introduced, following piloting in five prisons during 2011. Monitoring is driven by legislative and human rights imperatives. The Equality Act 2010 prohibits discrimination on the grounds of sexual orientation in the provision of goods, facilities and services and in 2007 the single Commission for Equality and Human Rights was established to oversee rights in all the main equality dimensions, including transgender and sexual orientation. Statutory authorities must now monitor sexual orientation.<sup>5</sup> Even though these provisions form a new imperative to address the needs of

LGBT prisoners, it can be argued that combating homophobia in prisons is slipping off the NOMS agenda at a time of economic constraints and the resulting loss of specialist equalities roles in prisons.

With reference to the existing literature, I shall explore the quality of the current engagement with sexual orientation and transgender issues in prisons in England and Wales. I draw upon HM Inspectorate of Prisons inspection findings to explore how well outcomes for LGBT prisoners are considered and provided for. The benefits of monitoring — and the risks arising from it being poorly implemented — are also discussed, with some conclusions reached about the extent to which it can be put to good use in helping to correct the discrimination, heterosexism, homophobia and transphobia that has been described in the literature and by many prisoners with whom HMIP staff have spoken.

### The literature

The academic literature about LGBT prisoners is very limited and is dominated by, mainly, North American scholarship focusing on transgender prisoners. The very few research studies that have looked beyond transgender to the wider and different issues of gay, lesbian and bisexual prisoners has mostly been focused on the role of masculinity in propelling homophobia in prisons. A key issue that is relevant to the practical focus here is Michael Kimmel's argument that 'homophobia is a central organizing principle of our cultural definition of manhood'.<sup>6</sup> The theoretical framework underpinning that assertion holds that homophobia is a resource that prejudiced individuals and social structures use to enable the promotion of heterosexual masculinity as the sole

1. Bent Bars Newsletter 1; <http://www.bentbarsproject.org/resources/newsletter> (retrieved 3 November 2012).
2. Stonewall (2012) *Living together: British attitudes to lesbian, gay and bisexual people in 2012*; London, Stonewall.
3. The terms 'prison' and 'establishment' refer here to state-operated and privately run prisons, and include young offender institutions.
4. Ministry of Justice, National Offender Management Service (2011) PSI 32/2011 *Ensuring Equality*.
5. Aspinall, P and Mitton, L (2008) *Operationalising 'sexual orientation' in routine data collection and equality monitoring in the UK*; Culture, Health & Sexuality: An International Journal for Research, Intervention and Care, 10 (1), 57-72.
6. Quoted in Robinson, R (2011) *Masculinity as Prison: Sexual Identity, Race and Incarceration*; California Law review, 99, 1308-1408 (p. 1332).

legitimate type of masculinity, in which many have a strong vested interest. Homophobia works by encouraging people to join together in vilifying gay men who challenge conventional ways of being 'masculine'. In doing so, they are able to simultaneously demonstrate their own masculinity and uphold masculine heterosexual norms. Upholding heterosexual norms is of course a process in which women as well as men might participate. If Kimmel's analysis is accepted, it can help us to see how eliminating homophobia in men's prisons is inevitably a huge challenge. It is made even more difficult by the tendency of bureaucracies to perpetuate discrimination rather than seek to overcome it *via*, as Hayman describes, 'the unthinking repetition of the ordinary ways of operating in the world'.<sup>7</sup> From the perspective of a British criminologist, Yvonne Jewkes echoes Kimmel's argument in writing that prisons are environments 'where misogyny and homophobia go hand in hand with proof of one's own 'normal' masculinity.'<sup>8</sup> Although homosexuality is the subject of much scorn and derision among prisoners and officers, it is also commonplace, and a feature of prison life. Men who feel less powerful in prison than in their lives outside may despise gay or transgender prisoners as a means of restoring their self-image.

Therefore, the victimisation of gay men who are dismissed by *macho* prison culture as in some way feminised and not 'real' men helps to explain sexism, racism, nationalism, tribalism and homophobia in prisons.<sup>9</sup> The literature on masculinity and prisons is helpful when considering male establishments, but other than the insights it offers into the ways in which women too can be complicit in upholding conventional heterosexual norms, it has much less to offer us in understanding the experience of lesbians in prison.

The literature about lesbian prisoners is also very limited and some very brief references to feminist

## Men who feel less powerful in prison than in their lives outside may despise gay or transgender prisoners as a means of restoring their self-image.

theoretical perspectives about women in prison may be helpful here. Women are in any case punished for transgressing traditional female gender roles,<sup>10</sup> one of a range of factors that may have resulted in the excessive imprisonment of women. The 'fetishism of prison security'<sup>11</sup> that Carlen describes provides a rationale for the degrading treatment of female prisoners of all sexualities. Corston pointed out that the prison system is designed by and for men, not around the particular needs of women.<sup>12</sup> The disproportionate use of imprisonment with women is likely to have a particularly negative effect on lesbian prisoners. The Reverend Dr Connie Baugh, a pastor working in American women's prisons, wrote: 'In fact, many institutions are so paranoid about homosexuality that they have rules against any physical contact. You could be given an infraction just because you gave another prisoner a hug'.<sup>13</sup> This, as will become apparent later, is not solely a problem in US prisons. Stereotyping causes many lesbian prisoners to be seen as predatory, and the pervasive nature of homophobia inside and outside prisons ensures many lesbians internalise those stereotypes.<sup>14</sup>

Turning to the more extensive literature about transgender prisoners, Mann writes about how the nature of prison hierarchies based on masculine dominance produces conditions in which it is particularly difficult for transgender inmates to survive. She argues that transgender prisoners are accorded the lowest possible status, leaving them at high risk of violence, exploitation and sexual harassment, 'because the prison hierarchy subjugates the weak to the strong and equates femininity with weakness'.<sup>15</sup> Tarzwell claims that some prison staff reinforce hierarchical patterns of hyper-masculine dominance, so gay as well as transgender prisoners are under-protected. To illustrate that process of reinforcement, he cites evidence that sexual assault of gay and transgender prisoners is often assumed to be

- 
7. In Levit, N (2001) *Male prisoners: privacy, suffering and the legal construction of masculinity*; in D Sabo, T Kupers and W London (eds.), *Prison Masculinities*; Philadelphia, Temple University Press (p.93).
  8. Jewkes, Y (2002) *Captive Audience: Media, Masculinity and Power in Prisons*; Cullompton, Willan (p.18).
  9. Jewkes, 2011 (see note 8).
  10. Tarzwell, S (2006) *The gender lines are marked with razor wire: addressing state prison policies and practices for the management of transgender prisoners*; Columbia Human Rights Law Review, 38, 167-219.
  11. Carlen, P (1988) *Sledgehammer: Women's Imprisonment at the Millennium*; Basingstoke, Macmillan (p.7).
  12. Home Office (2007) *A report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System: The Corston Report*; London, Home Office.
  13. In Markowitz, L (2000) *Lost on the inside*; In the Family, 5 (3) (p.13).
  14. Markowitz, L (2000). See note 13.
  15. Mann, R (2006) *The Treatment of Transgender Prisoners, Not Just an American Problem – A Comparative Analysis of American, Australian, and Canadian Prison Policies Concerning the Treatment of Transgender Prisoners and a "Universal" Recommendation to Improve Treatment*; Law and Sexuality Review, Lesbian Gay Bisexual and Legal Issues 91, 92-134 (p.105).

consensual sex.<sup>16</sup> Robinson adds that because sexual activity is against prison rules and therefore has to be clandestine, all sexual activity, whether consensual or non-consensual, may be perceived to be equally reprehensible, thereby providing opportunities for the sexual victimisation of vulnerable prisoners to remain concealed.<sup>17</sup> Sexton *et al.* analysed data drawn from American victimisation studies and concluded that 'transgender inmates are marginalized in ways that are not comparable to other prison populations.'<sup>18</sup> Whittle *et al.* report similarly high levels of victimisation of transgender people in the UK, exacerbated by unsatisfactory access to services, including health care. They conclude that: 'Trans people are over-represented in the prison population in proportion to the estimated trans population and in every sphere of life, are subject to high levels of abuse and violence.'<sup>19</sup> Over-representation may, it has been claimed, partly result from transgender people resorting to offending to fund gender reassignment surgery.<sup>20</sup>

### The monitoring of sexual orientation

Monitoring the sexual orientation of prisoners might provide a further impetus for developing LGBT focused work in prisons, but there is a risk of it doing the opposite if few prisoners are confident in identifying themselves as lesbian or gay. Assumptions might be made that there are very few gay and lesbian prisoners and their needs may, as a result of their low visibility, remain unrecognised. A Stonewall leaflet designed to encourage the completion of monitoring forms points out that 'if local authorities and hospitals and police forces and employers don't know who's out there, they can't be expected to get it [the provision of services] right.'<sup>21</sup> But the manner in which

sexual orientation is monitored is fraught with difficulty, especially for prisoners who may be fearful of victimisation from other prisoners and discriminatory attitudes from staff if they tick anything other than the 'heterosexual' box. Aspinall and Mitton argue that in the UK, experience of sexual orientation monitoring is scant and there have been few studies, providing little to draw upon when trying to construct an effective monitoring mechanism. Sexual orientation is not a variable that is consistently used and defined in official surveys. Consequently, the definitions of sexual orientation

. . . the manner in which sexual orientation is monitored is fraught with difficulty, especially for prisoners who may be fearful of victimisation from other prisoners and discriminatory attitudes from staff if they tick anything other than the 'heterosexual' box.

(which are far from straightforward), categorisation, and a range of other methodological problems have to be addressed without any useful existing body of evidence. There are no robust data about the size of the LGB population and estimates are widely divergent. There is uncertainty over the demographic characteristics of LGB people because some of these variables are known to be correlated with non-response in surveys.<sup>22</sup>

In his study of a US prison with a wing known as K6G that had been designated for gay prisoners, Robinson describes difficult dilemmas about how to identify gay prisoners. His study has strong implications for monitoring of sexual orientation in British prisons — despite, it is hoped, the absence of any plans to establish a 'gay wing' in the UK. Pointing out that 'gay Identity is not a neutral vessel; it is

an amalgam of homophobic stereotypes and largely unsuccessful attempts by pro-gay people to subvert those stereotypes.'<sup>23</sup> He describes how prisoners are selected for K6G. They are asked if they are gay in a busy room in the hearing of other prisoners: the assumption is made that prisoners will be willing to provide the information. Some refuse to identify as gay

16. Tarzwell, S (2006). See note 10.

17. Robinson, R (2011). See note 6.

18. Sexton, L; Jenness, V; and Sumner, J (2010) *Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons*; Justice Quarterly, 27 (6) 835-866.

19. Whittle, S; Turner, L and Al-Alami, M (2007) *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*; London and Manchester, Press for Change / Manchester Metropolitan University (p.21).

20. Poole, L; Whittle, S and Stephens, P (2001) *Working With Transgendered And Transsexual People As Offenders In the Probation Service*; Probation Journal, 49, 227-232.

21. Stonewall (undated) *What's it got to do with you? 10 reasons why you should fill in those funny box things at the end of forms*; London, Stonewall.

22. Aspinall P, and Mitton, L (2008). See note 5.

23. Robinson, R (2011) *Masculinity as Prison: Sexual Identity, Race and Incarceration*; California Law review, 99, 1308-1408 (p. 1336).

because of the lack of privacy and because officers asking the question have not explained why they are asking it. The result of such crude questioning is that K6G is mainly populated by white, middle class inmates who are sufficiently confident and 'out' to identify as gay. Black and *Latino* prisoners (who may not wish to alienate themselves from the support systems that their racial community provides for dealing with racial discrimination by publicly identifying as gay in the prison) stay on 'normal' location. Robinson concludes that 'by designating just a sliver of its population as vulnerable, the jail may seek to absolve its constitutional responsibility to protect *all* people in its custody... by removing gay and transgender inmates — but not attending to hegemonic masculine norms... — the Jail simply shifts victimization.'<sup>24</sup>

Some of the crude monitoring methods Robinson describes are replicated in the UK. In a recent inspection, inspectors criticised the prison's monitoring methods. The induction officer handed the newly arrived prisoners a form on which they were told to indicate their sexual orientation, offering no explanation of it. He did not ask the prisoners if they could read, or check they understood the question. Neither did he provide information about how the sexual orientation information would be used, where it would be kept, and who would have access to it. He appeared embarrassed about asking, and he did not know why sexual orientation was being monitored. It was difficult to imagine many prisoners being willing to tick anything other than the 'heterosexual' box.

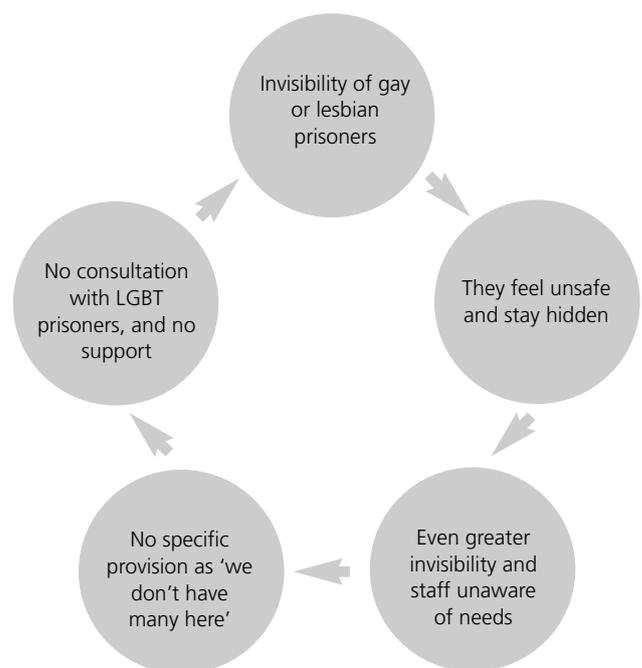
Clearly, great care needs to be taken about how monitoring is done. Staff should be trained about its purpose and how to ask the question. Prison officers should be encouraged to think about and question their own attitudes to LGBT people so that these do not obstruct their ability to perform the task of monitoring appropriately. Questions about sexual orientation should normally be asked by officers, not by prisoners who help with induction; unless there are very strong reasons for allocating the task to a particularly well trained, visible and conscientious team of prisoner diversity representatives who are thoroughly supported and supervised. It should be possible to reassure prisoners that information about their sexual orientation is confidential and the data are made anonymous before analysis and reporting. It must be recognised that, for reasons set out in the literature, the data are almost certainly an underestimate of the size of the LGB community in the prison and that some groups, such as Black and minority ethnic gay men, may be particularly reticent about identifying themselves as gay.

## HMIP inspection findings in relation to work with LGBT prisoners

Turning now from the theoretical literature and the issue of monitoring to a more practice-focused analysis of the treatment of LGBT people in British prisons, I will describe some of the conditions and experiences that HM Inspectorate of Prisons inspectors and researchers have found recently.

In many prisons, a 'cycle of invisibility' exists in relation to lesbian or gay prisoners; while the numbers of transgender prisoners are so few that, with often only one transgender prisoner in an establishment at a time, they are isolated and often have only very restricted access to the regime. The cycle of invisibility can be represented thus:

**Figure 1: the cycle of invisibility.**



The invisibility of gay and lesbian prisoners is compounded by the heterosexist tendency of some staff to perceive being gay, rather than homophobia, as the problem. During a recent inspection we talked with an Iranian gay man who was facing deportation at the end of his sentence. He was fearful of being killed on his return to Iran and he had asked staff for help in contacting organisations that had experience of supporting Iranian gay men. A letter the diversity senior officer had written to him concluded: 'If I can be of any further help to you with problems arising from your homosexuality please do not hesitate to ask.' He told us how upset he was about that phrase, which expressed the officer's failure to understand that his problem was

24. Robinson, R (2011) (p.1314). See note 23.

not being gay, but the prospect of encountering extreme, violent homophobia on return to his homeland. While it is perhaps understandable that some staff might not understand subtle distinctions that have serious implications, it is inexcusable that a senior officer who had been given a lead role around diversity should be so ignorant.

In a category C training prison, we found the prison had no idea of the number of prisoners who might describe themselves as gay, and there was no gay support group running. A group had previously existed. It had flourished under the leadership of a prisoner diversity representative, but since his release the group had become moribund. Nevertheless, five per cent of prisoners there were willing to identify themselves as gay when completing our survey, surely enough to make a gay prisoner's group or consultative forum sustainable even if only a small proportion of prisoners wanted to attend it. The community of gay prisoners there appeared to have gone from being vibrant and visible to being hidden and isolated. That illustrates how progress made in combating homophobia and upholding LGBT rights in prison is fragile: hard-won gains can very easily be lost. Findings such as these led HM Chief Inspector of Prisons to conclude that '(s)exual orientation and gender remained generally the least well protected characteristic in prisons under the Equality Act 2010.'<sup>25</sup>

With, it seems, relatively small numbers of LGB and very few transgender prisoners, quantitative survey-based research is of limited value in understanding the experience of LGBT prisoners (in the Inspectorate's surveys of prisoners that are undertaken shortly before inspections, between 3 and 5 per cent of prisoners identify themselves as being gay or lesbian). Prisoners' accounts of their experiences are therefore particularly important, and inspectors can often verify what prisoners say about their treatment by observation, talking with other prisoners, inspecting documentation, and enquiring with staff. The following are examples of unsatisfactory engagement with LGBT issues that inspectors have recently found in prisons:

**Policy:** In some establishments there was little mention of LGBT issues in equalities action plans. Many of those that did specify actions to combat homophobia were never reviewed, rendering them ineffective. Unlike data concerning racist incidents, homophobic incident reports were in many establishments not analysed nor

discussed by the senior management team, and therefore little was known about homophobic victimisation. In some, staff accepted the invisibility of LGBT detainees, offering inspectors the rationale that 'we don't get many here' or 'we don't know who they are' for having made little attempt to address homophobia and provide support for gay, lesbian or transgender prisoners.

**Challenging homophobia:** often, staff failed to challenge homophobic name-calling and abuse, which was often not addressed in violence reduction strategies. Discrimination against LGBT detainees was sometimes excused by reference to religious teaching or 'cultural' norms that were not questioned. In some establishments no clear statement was made during induction or in residential units that homophobic or transphobic abuse would not be tolerated.

**Supporting gay and lesbian prisoners:** some establishments had no information about LGBT support or social organisations. Or, prison staff gave out the address of LGBT support organisations without inviting prisoners to tell them about their concerns, which may have conveyed the message that the staff was not interested, or not competent to provide support. Many establishments had no gay group or consultation forum. Often, LGBT magazines were not available through the library or prison shop. In a men's

. . . progress made in combating homophobia and upholding LGBT rights in prison is fragile: hard-won gains can very easily be lost.

prison, two gay prisoners were given warnings for putting their arms round each other following a bereavement, because officers found that action 'offensive'. In a young offender institution, a diversity manager's plans to display the Stonewall '*Some People are Gay: Get Over It*' posters on residential units were blocked by other staff. In one prison, condoms were not available because it was against the ethos of the establishment to accept that, despite their proscription, some prisoners would nevertheless have sexual relationships.

In 2012, prison inspectors participated in a workshop about inspecting work with LGBT prisoners, designed to raise our awareness of LGBT issues when inspecting. In small groups we discussed the following five scenarios, what the issues were, and how outcomes for LGBT prisoners could be improved. The first four scenarios are from recent prison inspection reports. Scenario 5 is from the personal experience of a gay ex-prisoner who helped us devise the workshop.

25. HM Chief Inspector of Prisons (2012) *Annual Report*; London, The Stationery Office (p.45).

## Scenario 1

**Inspection finding:** 'Lesbian and bisexual women were more negative than other women in our survey and several we spoke to said staff were heavy-handed in dealing with women deemed to be behaving 'inappropriately'. We saw two women reprimanded for hugging each other and were shown a number of negative incentives and earned privileges slips for similar actions. This lack of tolerance to non-sexual physical contact and displays of affection was reinforced by the sexuality section of the diversity policy, which focused on how women should behave rather than how lesbian and bisexual women would be supported.'

### **What are the issues?**

Staff seemed to be fearful of lesbian relationships. There was an intolerance of physical expressions of affection out of all proportion to any legitimate concerns about good order and discipline. The issuing of IEP warnings in those circumstances were in many instances an over-reaction. It was a practice that provided opportunities for any staff with homophobic attitudes to find a 'legitimate' means of expressing them. The diversity policy was not an appropriate document in which to specify standards of behaviour.

### **What could be done to improve the situation?**

Staff attitudes and culture should be challenged through line management and by training. There should be better management checks on IEP warnings. The diversity policy should be revised with content on appropriate behaviour placed elsewhere.

## Scenario 2

**Inspection finding:** 'Provision for gay and bisexual prisoners was better developed than in many other establishments. Gay and bisexual prisoners generally did not feel discriminated against and they said that any abuse from other prisoners was dealt with robustly by staff. There was a well-attended prisoner-led meeting for gay, bisexual and transgender prisoners but it afforded insufficient privacy. Two prisoners identifying themselves as transgender did not feel adequately supported.'

### **What are the issues?**

Insufficient attention had been given to providing a private meeting room for the forum, but in many other respects the prison was doing well in combating homophobia. Staff might require training about the needs of transgender prisoners, and it may be that the prison had not prepared properly for the recent arrival of two transgender prisoners.

### **What could be done to improve the situation?**

A better meeting room could be provided, or prisoners not attending the forum could be kept away from the room during meetings. The diversity manager should review the training needs of staff in relation to transgender prisoners. Staff could be encouraged to interact more with the transgender prisoners. A senior

manager should speak with the transgender prisoners regularly to find out if their experience of the prison was improving, with LGBT issues discussed regularly at meetings of the diversity and equality action team.

## Scenario 3

**Inspection finding:** 'Gay prisoners we spoke to complained that there were copies of *Nuts* and other similar magazines in the library, but no gay publications such as *Attitude* and *GT*. They had been told they could order them through the shop, but were worried about the high cost, and being 'outed' by ordering them. Some of the staff was concerned about the possibility that gay publications would have sexually explicit content so there was resistance to stocking them.'

### **What are the issues?**

The staff had assumed all gay publications are pornographic. Why had they not made any effort to find out about those that do not have explicit sexual content? Tolerance of heterosexually explicit magazines (some of which might be offensive to female staff) but intolerance of gay publications, whether or not they have sexual content, is discriminatory and unacceptable. Prisoners being worried about being 'outed' by shop ordering and delivery processes might indicate that the establishment is not safe for gay prisoners, and that should be investigated.

### **What could be done to improve the situation?**

The library should review their coverage of LGBT media and stock publications of interest to gay prisoners. A forum should be established so that prisoners can be regularly consulted about the library, shop, and their safety.

## Scenario 4

**Inspection finding:** 'There was a draft strategy for religion but the needs of older, gay, bisexual and transgender prisoners were not strategically mapped, and a prisoner who was gay had been managed under the closer management arrangements because of abuse he had been subjected to by other prisoners because of his sexuality.'

### **What are the issues?**

The prison had failed to address the needs of gay and transgender prisoners, with no policy coverage, and gay prisoners were not safe. It was unacceptable that closer management arrangements were being applied to protect a prisoner from abuse when staff has a responsibility to ensure the safety of all prisoners. Homophobic abuse should have been challenged immediately. Instead, staff allowed the victimisation to escalate to the point where exceptional measures were needed to protect him.

### **What could be done to improve the situation?**

Senior managers should consider how it was that the prison's culture and environment allowed this

situation to develop. The needs of gay and transgender prisoners should be reviewed, and an action plan about them implemented. Implications for staff training should be explored. Managers should ensure that the staff is proactive in challenging homophobic and transphobic abuse.

### Scenario 5

**Situation:** the prison had established a GBT support group that attracted members through word of mouth. A prisoner had requested support but was told nothing was available, despite the existence of a group, which he had not heard about.

#### **What are the issues?**

Staff being ignorant of the gay group's existence suggests a failure of communication, and the prisoner's personal officer should have taken responsibility for finding out what support was available. Why had the diversity manager not promoted the group's benefits among staff? There was no champion in the prison for gay and transgender matters. That raised questions about the quality of the support provided to diversity representatives and the attitudes of staff.

#### **What could be done to improve the situation?**

The group should be promoted among staff and prisoners, with safeguards put in place to ensure that homophobic prisoners cannot disrupt it. Managers should review the support and supervision that prisoner diversity representatives receive. Staff ignorance should be addressed through training and supervision, while communications about equalities issues should be made more systematic.

## Discussion

The inspection findings described here suggest that much of the theoretical literature, including some of the American research, is relevant to LGBT prisoners in England and Wales. For example, the unfair penalties imposed against American prisoners who put their arms around each other were also found being used against LGBT prisoners in English prisons. Recurrent themes in the inspection findings, surveys, and prisoner consultations include the tendency of staff to overlook homophobic or transphobic abuse and victimisation, a failure to support gay prisoners affected by homophobia, and the lack of effective challenging of prisoners with discriminatory attitudes and behaviours, particularly in the male estate. These conditions may reflect shared acceptance by some staff of the hyper-masculine norms referred to by Kimmel and Jewkes, above; those norms being the progenitors of homophobia and transphobia. It may also reflect the difficulty that large bureaucratic

organisations have in challenging deeply ingrained heterosexism. That difficulty contributes to the 'unthinking repetition of the ordinary ways of operating' that Hayman<sup>26</sup> described. Meanwhile, the relatively small numbers of prisoners who identify themselves as being lesbian, gay or transgender helps the 'we don't have many here' attitude to persist, so homophobia remains unchallenged.

While monitoring is rolled out, budgetary cutbacks mean that specialist diversity posts have been cut, which might result in a loss of focus on the needs of minorities in prison who may be too fearful of reprisals to be speak out and be noticed. The *Ensuring Equality* PSI requires an overall action plan to be produced and reviewed as part of governors' responsibilities in taking a lead role in equality and diversity work. It may have been wrongly assumed that senior managers have the expertise, commitment and resources available to implement the most effective means of working towards the required outcomes. The PSI elides the importance of policy in bringing about improvements. Tarzwell reminds us that effective policy mandates action to ensure equalities, clarifies responsibilities, reduces the discretion that personnel have to discriminate unfairly, and articulates the necessary organisational commitment to change.<sup>27</sup> Through its diminution there may be insufficient focus on those imperatives.

Despite the existence of useful resources to help prisons monitor in an acceptable and effective manner<sup>28</sup> there are instances of monitoring being implemented carelessly, without regard to the complexities of the task. Raising the issue of sexual orientation during or shortly after prisoners' induction provides a good opportunity to challenge any homophobic attitudes, while also engaging positively with gay and lesbian prisoners to provide information and reassurance. But that will only happen if prison officers are sensitive to the pervasive and subtle nature of homophobia, and have learned how to be proactive in confronting it effectively. Prison officers who have not been through that learning process will ask the monitoring question clumsily (or prisoner diversity representatives will be told to ask it), causing monitoring to be another oppressive experience for gay and lesbian prisoners. The resulting underestimate of the LGBT prisoner population will give prisons who are taking no effective action to tackle homophobia a means of appearing to be doing the right thing, while allowing them to claim there is no need to provide support because they now 'know' that they 'don't have many here'.

The small numbers of transgender prisoners means that their needs are often overlooked, so preparations for the arrival of a transgender prisoner are sometimes

26. In Levit, N (2001). See note 7.

27. Tarzwell, S (2006). See note 10.

28. See Nacro (2010) *Guide to working with lesbian, gay and bisexual offenders in custody*; London, Nacro.

badly thought-through, despite attempts by well-intentioned staff to get it right. Many prison officers are unlikely to know a transgender person and will not therefore have had the opportunity to question the negative stereotypes they will inevitably have absorbed, unless training has provided that important opportunity. Bureaucracies are slow to provide guidance to staff. A Prison Service Instruction on the care and treatment of transgender prisoners was not issued until 2011, despite the Service having undertaken in 1997 to write it.<sup>29</sup>

One recent inspection report remarked positively that there were very few reports of homophobic victimisation, which was interpreted as evidence that the prison was a safe place for gay prisoners. Inspectors 'triangulate' findings by looking for other information that can verify or refute them, but it was not clear from the report whether efforts had been made to ask gay prisoners if they had sufficient confidence in the handling of discrimination incident reports to submit them. That may show how assumptions arising from heterosexist norms are, of course, not confined to prison staff but are also sometimes evident among prison inspectors as well, an issue that the Inspectorate is addressing.

### Summary

The effects of unfair discrimination are not trivial — the attempted suicide that Pedro described at the start of this article reminds us that these can be life and death issues. Inspection reports have described some very positive work being done in prisons to tackle homophobia and support LGBT prisoners, and imperatives derived from equalities legislation should provide an impetus to turn pockets of good practice into provision that can be found in every establishment. Nevertheless, the inspection findings described here suggest that some prison staff are still allowed to find new and creative ways of oppressing LGBT prisoners, while the institutional bureaucracies in which they work have not always understood that it is endemic homophobia, not homosexuality, that is the problem to be addressed. In some establishments support groups have been allowed to fail, gay prisoners are reluctant to be visible (which may suggest they feel unsafe) and sanctions are applied unfairly against lesbian or gay prisoners. That may be because few of the prisons inspected during 2011-2012 had effective strategies for combating homophobia. Failure to tackle homophobia amounts to complicity in the abuse of LGBT prisoners.

Some of the theoretical frameworks that address the relationship between masculinity and homophobia can provide insights into the difficulties of sustaining progress on these issues. The literature on masculinity and prisons

can help us understand the durability of homophobia and other oppressive practices, like sexism, in prison. It can help us appreciate the difficulties that policy makers, managers and staff face in seeking to overcome it and indicate which strategies might be effective. Staff can become as embroiled in the relationships of dominance and subordination as prisoners are, automatically reproducing and perpetuating discriminatory practices. That is, unless they are aware of their potential collusion with those practices and they are given the resources, support, and training required to equip them to tackle heterosexism and homophobia effectively. Meanwhile, monitoring, despite its necessity and the good intentions behind it, may become a source of misleading and inaccurate data. It might allow NOMS to appear to be progressing the equalities agenda in prisons while, in reality, senior managers are given the freedom to monitor, perhaps unknowingly, in ways that fail to achieve the objective, and which may be yet another anxiety-raising and potentially dangerous experience for gay prisoners to endure. There is a risk that the loss of specialist diversity staff in prisons will mean there are fewer staff competent and available to consult, empower and support LGBT prisoners, celebrate LGBT culture, and challenge homophobic abuse. It remains to be seen if outcomes for gay, lesbian and transgender prisoners will improve, or whether the impetus will slip away as prisons are expected to do more with greater numbers of prisoners and ever-reducing resources.

### APPENDIX 1: Gay prisoners' suggestions

A gay prisoners' forum in a men's prison recently made the following suggestions about how discrimination against LGBT prisoners can be reduced (and these illustrate the value of consultation):

- Confidentiality — staff must not pass on information about sexual orientation without the subject's consent
- There should be LGBT prisoner representatives to talk to, who will take problems to staff for action
- Staff should provide information about organisations outside the prison that prisoners can contact for support or information
- It is essential to maintain a group or forum for LGBT prisoners that meets regularly
- There should be visible positive role models, celebrations of LGBT culture, and LGBT publications should be available
- It would be useful to have talks or visits from a gay men's health worker
- There should be a robust means of reporting homophobic abuse, with action taken to stop it
- All policies should be equality impact assessed to ascertain if there might be a particular impact on LGBT prisoners.

29. Whittle, S *et al.* (2007). See note 19.