

Statement of: Frances Crook
No. of Witness Statement: 1st
Dated: 13th June 2018

CO/5076/2017

IN THE ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN (on the application of FAULDER and others)

Claimants

- and -

SODEXO LIMITED

First Defendant

- and -

THE SECRETARY OF STATE FOR JUSTICE

Second Defendant

WITNESS STATEMENT OF FRANCES CROOK OBE

I, Frances Crook, Chief Executive Officer of the Howard League of Penal Reform of 1 Ardleigh Road, London N1 4HS, registered charity no. 251926, state as follows:

1. I am the Chief Executive Officer of the Howard League for Penal Reform (Howard League) and have overall responsibility for policy and organisational strategy in line with the charity's strategic objectives as agreed by the Board of Trustees.
2. I am authorised by the Howard League to make this statement. The contents of this witness statement are true to the best of my knowledge, information and belief. Where appropriate I indicate which of the statements are made from my own knowledge and which are matters of information and belief. All of the documents referred to in this statement are publicly available, and I have provided web links to all of the documents.

About the Howard League for Penal Reform

3. Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the UK and has more than 12,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK Government.
4. The Howard League works for less crime, safer communities and fewer people in prison. It aims to achieve these objectives through conducting and commissioning research, carrying out investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's wider policy work draws on more than 150 years of experience in the field of penal reform. I regularly visit prisons and work with policy-makers, representatives of Her Majesty's Prison and Probation Service ("HMPPS"), academics and international bodies concerned with penal reform.

Inadequate oversight of delegated functions

5. In light of the increase in the delegation of state functions across the criminal justice sector to private agencies, the Howard League has become concerned about the extent to which the state has been able to monitor and hold the private sector to account. In my experience, provision for monitoring and oversight is inadequate and even when concerns are raised, the state fails to respond in order to rectify the errors. The consequences of these failures of oversight have been far-reaching. They include serious problems in Secure Training Centres designed to hold vulnerable children, an investigation by the Serious Fraud Office into the management of electronic tagging, privatised probation services that have been criticised by the National Audit Office and the failure of private companies to adequately maintain prisons (see below).

6. In the prison context, given the unique closed nature of prisons, and the particular vulnerability of prisoners who are under the complete control of the state, the Howard League is of the view that proper oversight is critical. It is completely different from a normal consumer market, where customers have the ability to critique and challenge services in a transparent and public way.
7. I understand that the Secretary of State has relied on the fact that there are a range of bodies responsible for the oversight of the functions delegated to private companies such as Sodexo Limited. In the Howard League's experience, these mechanisms are insufficient to secure and safeguard the rights of prisoners. There are a number of ways in which prisons are monitored: (i) the Independent Monitoring Board ("IMB"); (ii) the HM Inspectorate of Prisons ("HMIP") and (iii) the National Offender Management Service ("NOMS") or HMPPS as it is now known. In my experience these oversight mechanisms do not have any specific application in contracted out prisons. They apply in the same manner to all prisons, regardless of whether the prison is privately or state run. The Controller also monitors private prisons, in relation to their contractual compliance. I address each of these four mechanisms in detail below.

(i) The Independent Monitoring Boards

8. As I understand it, the IMBs are required to make frequent visits to prisons, hear complaints and report back to the Secretary of State for Justice on any matter which they consider expedient to mention.
9. In my view, IMBs can do vital and important work in reporting problems that prisoners are facing, but their effectiveness varies a good deal between institutions. IMBs do not have the power to hold prison authorities to account for their failure to address the problems that are identified by IMBs, and not all problems are being reported either by prisoners to the IMB or by IMBs to the Secretary of State. Even when the IMB raises concerns they are often not dealt with by the Secretary of State and it is not uncommon for

annual reports for a single establishment to raise the same concerns year after year. By way of illustration, the press release by the IMB in respect of its 2017 report on Isis Prison states:

*"The Independent Monitoring Board at HMP/YOI Isis today publishes its 2017 Annual Report. The Board's main message - as it was in 2015 and 2016 - is that the prison is failing to fulfil its primary role to train and rehabilitate prisoners."*¹

10. IMB reports often do not pick up on pressing issues. For example, the annual IMB reports from Peterborough Prison for the last four years do not refer to strip-searching at all. Nor do the annual IMB reports from Bronzefield prison, another prison run by Sodexo. These annual reports fail to identify strip searching as a matter which the IMBs consider expedient to mention to the Secretary of State for Justice, even though this is evidently a serious issue identified by HMIP, as detailed below.
11. IMBs often lack members. The 2017 IMB report of Peterborough Prison shows the IMB at that time had less than the recommended complement of Board Members. In May 2018 in response to a Parliamentary Question querying the extent to which the Secretary of State recorded the staffing of IMBs, the Minister of State for Courts and Justice, Rory Stewart, admitted the extent of this problem, stating that one third of IMB posts are vacant.²
12. As IMB members are volunteers, it is perhaps not surprising that there are difficulties in recruitment.

¹ IMB, 'Regime at HMP Isis fails to prepare prisoners for release', *Press Release: HMP Isis*, <https://www.imb.org.uk/regime-hmp-isis-fails-prepare-prisoners-release/> (April 2018).

² UK Parliament, *Independent Monitoring Boards: Written question – 144344* <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-15/144344/> (May 2018).

(ii) HM Inspectorate of Prisons

13. HMIP is an independent inspectorate that reports on conditions and treatment of those in prisons, young offender institutions and immigration detention facilities.
14. There are two key weaknesses with the HMIP review mechanism. First, HMIP only visits prisons every four or five years which means that problems can go unchecked for years at a time. Secondly, there is no obligation to implement its recommendations.
15. In a Justice Committee session in July 2016, Peter Clarke recommended that prisons be required to respond to HMIP recommendations:

*"A requirement to respond would be very helpful. What we see far too often is that we make a number of recommendations, go back to inspect again in two or three years' time and find that very few of those recommendations have been achieved...after each inspection, the inspected establishment is required to produce an action plan, which we publish on our website, but the follow-up to that is patchy. What I would like to see is not a power for us, but a requirement, as you describe, for the inspected bodies – the Ministry of Justice, NOMS or whoever – to set out their rationale for either accepting or rejecting our recommendation. That brings with it a degree of public accountability and, potentially, parliamentary accountability."*³

16. In response, the Ministry of Justice implemented the Urgent Notifications protocol in November 2017. This is intended to allow HMIP to notify the Secretary of State for Justice directly of serious concerns following an inspection and requiring an action plan to be published within 28 days to tackle the issue raised. The protocol was actioned for the first time in

³ Justice Committee, *Oral evidence: Criminal justice inspectorates and the Prisons and Probation Ombudsman*, HC 415 (July 2016).

January 2018 following the inspection of Nottingham Prison that found the prison to be *“fundamentally unsafe”*. The notification procedure is most likely to be used in response to extremely poor conditions, rather than a mechanism to increase oversight.

17. The two most recent HMIP reports on Peterborough Prison demonstrate the failure of HMIP to effect change. The June 2014 report identified that strip-searches were overused and poorly governed and recommended that the use of strip-searches were reduced and only used when it was necessary. The key recommendation was that decisions to conduct strip-searching *“should be carefully monitored”* (p.59, §5.1). On 23 January 2018 HMIP publishes its report following an unannounced visit in September 2017. That report stated that *“[s]trip-searching continued to be over-used and the governance of strip-clothing was poor”* (p.14). It stated that *“[s]trip-searching was used extensively”* and there were *“numerous examples of where this had been unnecessary”* (p.20). It concluded that the prison had *“not achieved”* the main recommendations of the previous report, which required that *“prisoners should only be strip-searched when there is sufficient, up-to-date intelligence suggesting it is necessary, and where no alternative is available. Decisions to conduct strip-searching, particularly under restraint, should be carefully monitored”* (p.69).

(iii) National Offender Management Service Audit and Assurance Team

18. The National Offender Management Service Audit and Assurance Team carry out an audit programme to audit all private and public establishments in a three-year cycle, to review the degree to which prison service performance standards are being met.
19. Peterborough Prison was subject to a NOMS audit in June 2016, and searching standards were rated as Moderate. It is not clear from the published materials what criteria this rating is based upon. Without some idea of the criteria prisons are being measured against, it is difficult to have

faith in the positive conclusions of NOMS, especially with institutions which in my experience have substantial shortcomings.

(iv) The Controller

20. As I understand it, the Controller is largely responsible for contractual compliance. In my experience the Controller's role is narrowly focused, and they lack authority and standing within private prisons. In my capacity as Chief Executive of the Howard League, I regularly visit prisons, both public and privately run. I have only ever met a controller on one visit. There is also an issue of independence. Controllers work in the private prisons, alongside the employees of the private contractors, and therefore may not be best placed to hold their colleagues and the management of the prison to account in a meaningful way.

Conclusion on oversight mechanisms

21. In my experience, *when effective*, these mechanisms can shine a light in dark corners. However, in my view, they are less effective in leading to meaningful and urgent change than is required to safeguard the fundamental rights of prisons, and ensure that prisons comply with the United Kingdom's human rights obligations.

22. In fact, I can think of no other field where damning findings made by inspectorates are routinely ignored; where the same problems are reported year after year are still not addressed and have no repercussions for the prisons. For example I have had some involvement in governance structures in the National Health Service and in my view, it would be unthinkable in the context of health services for the Care Quality Commission to make serious and recurrent findings that go unrectified. However, countless bodies have raised serious and grave concerns about prisons for years that have not resulted in adequate change.

Consequences of inadequate oversight in performance of delegated functions

23. The issue that is raised in these proceedings has implications for many other contexts where the state has delegated out public functions. For that reason, it may be helpful to provide the Court with some broader context. In this section I provide some examples of the consequences of inadequate oversight in performance of delegated functions.

Secure Training Centres

24. Secure Training Centres (“STCs”) were established in the 1990s and hold vulnerable children. Initially, all four centres were run by private companies carrying out functions on behalf of the Secretary of State for Justice. The centres have been the subject of widespread criticism due to a failure of adequate monitoring and oversight.
25. In 2007, the number of children held at Oakhill STC had to be capped to below 60, despite being built with space for 80, in order to improve the dangerous conditions. This decision was reaffirmed by Ofsted and HMIP reported later that year:

“Inspectors judge that the provision continues to be inadequate. The setting is failing to deliver positive outcomes for young people in care and education. HMI Prisons judged security and safety to be inadequate.”⁴

⁴ Ofsted, *Oakhill Secure Training Centre: Inspection report for Secure Training Centre*, <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/Oakhill%20STC%20Ofsted%20Inspection%20Report%2011%20October%202007%20%28PDF%20format%29.pdf> (October 2007).

*"Sadly, our inspection confirmed that staff at Oakhill continued to struggle to maintain order and to control safely the children in their care."*⁵

26. In January 2018, following another damning Ofsted inspection report from November 2017⁶ the Parliamentary Under-Secretary of State for Justice, Dr Phillip Lee, concluded that *"[t]he findings of a recent Ofsted inspection report on Oakhill secure training centre are completely unacceptable"*.⁷
27. Another STC, Medway, has now been taken over by HMPPS. The STC was the subject of an undercover journalist's investigation that revealed appalling abuse, described in a damning indictment by the Medway improvement board:

*"The events depicted in the Panorama programme broadcast on BBC1 on 11 January 2016, were, by common consent, deeply shocking. In the programme, we saw highly vulnerable children in custody at Medway Secure Training Centre (STC) being physically and emotionally abused by those who were employed to protect and care for them."*⁸

This abuse was perpetrated despite the presence of Youth Justice Board ("YJB") monitors on site, Ofsted inspections and HMIP.

⁵ HMIP, *Report on an announced inspection of the management, care and control of young people at Oakhill secure training centre*, <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/Oakhill%20STC%20HMIP%20report%20October%202007%20%28PDF%20format%209.pdf> (October 2007).

⁶ Ofsted, *Inspections of secure training centres: Inspection of Oakhill*, <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/Oakhill%20STC%20October%202017%20report.pdf> (November 2018).

⁷ House of Commons, <https://hansard.parliament.uk/commons/2018-01-23/debates/35B794A5-C721-42CF-A53C-A96EB4AD6BF4/OakhillSecureTrainingCentre> (January 2018).

⁸ The Medway Improvement Board, *Final Report of the Board's Advice to Secretary of State for Justice*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf (March 2016).

Electronic tagging

28. Inadequate monitoring and oversight has led to an investigation by the Serious Fraud Office in respect of G4S and Serco contracts to supply electronic tags and monitor individuals. The suppliers were caught overcharging the Ministry of Justice for tagging offenders, some of whom were actually back in prison or who had already died. Despite the ongoing investigation, the Ministry of Justice has subsequently awarded G4S a further contract to supply tags, worth £25 million.

Community Rehabilitation Companies

29. As part of the Transforming Rehabilitation reforms, in June 2014, 35 public sector probation trusts were replaced with 21 community rehabilitation companies (“CRCs”) for people who required probation oversight but were deemed to present a medium to low risk of reoffending. The contracts to run CRCs were awarded to eight companies, most of whom have failed to deliver without any consequences, as a result of inadequate monitoring and oversight.
30. In an article published in the Howard League Journal for Criminal Justice in 2017, academics Robinson, Burke and Millings noted that “[t]o date, information about how the eight different owners are approaching the task of managing ‘their’ CRCs is very limited; although one (Sodexo Justice Services which, with six CRCs, won the largest number of contracts) has already attracted considerable negative publicity for making immediate redundancies, introducing open-plan reporting centres and proposing to replace probation staff with kiosks that allow offenders to check-in electronically”.⁹
31. A report from Clinks published in April 2018, examined the role of the voluntary sector in the reforms in the probation services:

⁹ Gwen Robinson, Lol Burke and Matthew Millings, ‘Probation, Privatisation and Legitimacy’, *The Howard Journal*, Vol. 56, No. 2. (June 2017), pp.137-157.

*"Worryingly 60% of the voluntary organisations we surveyed say that TR has had a negative or very negative impact on their service users. Very few suggest that the changes have been positive for either their organisation or people under probation supervision."*¹⁰

32. The National Audit Office ("NAO") published its investigation into the changes to CRC contracts in December 2017. One of the NAO's key findings related to targets:

*"By the end of June 2017, CRCs had met one-third of the performance targets set by the Ministry. The Ministry expected CRCs to be meeting 24 targets from the end of February 2017. By the end of June 2017, CRCs had met eight (33%). By this point, the Ministry had raised service credits with an overall value of £7.7 million, and it had applied £2 million of these in deductions from its payments to CRCs. The remaining service credits were reinvested by CRCs back into services, waived or are subject to ongoing negotiations. HM Inspectorate of Probation and HM Inspectorate of Prisons have also raised concerns about the financial stability of CRCs and the quality of rehabilitation services"*¹¹

33. The response of the Ministry of Justice to these failures has been to increase the amount of money paid to CRCs. It is not clear to me whether any kind of enforcement action or increased oversight is being considered to ensure compliance and accountability. In oral evidence presented to the Justice Committee in March 2018 as part of the Transforming Rehabilitation inquiry Ed Roberts, Finance Director at Sodexo CRC Business, admitted that parent companies did provide guarantees but they had not been called upon.

¹⁰ Clinks, *Under represented, Under pressure, Under resourced: the voluntary sector in Transforming Rehabilitation*, https://www.clinks.org/sites/default/files/basic/files-downloads/clinks_track-tr_under_final-web.pdf (April 2018).

¹¹ National Audit Office, *Investigation into changes to Community Rehabilitation Company contracts*, Session 2017-2019 (December 2017).

Carillion

34. The contractor Carillion entered liquidation in January 2018, following longstanding failures by the state to properly monitor or enforce the contractual requirements for prison maintenance. Carillion had £200 million worth of maintenance and cleaning contracts for the prison service and continually failed to carry out contracted works. Despite this, and the fact that it issued three profit warnings in the preceding six months, the company was still awarded £2 billion worth of additional public sector contracts prior to its collapse.
35. The Joint Inquiry into Carillion published in May 2018 identified serious issues with the degree of oversight the government had:

“Where a company is providing so many key services for Government, it is essential that the Government can maintain confidence in that company’s ability to deliver for the period it is contracted to do so. Carillion was a hugely complex company, it operated in the highly volatile construction and outsourcing services markets, and it entered into long contracts with uncertain returns. It seems inconceivable that a credible oversight function could be performed properly by an examination of published accounts and quarterly meetings with the board.”¹²

¹² House of Commons and Business, Energy and Industrial Strategy and Work and Pensions Committees, *Carillion*, <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/769/769.pdf> (May 2018).

Statement of truth

I believe the facts in this statement are true:

Signed.....*Frances Crook*.....

Frances Crook OBE

Dated.....*13/6/18*.....