

Howard League for Penal Reform's response to the Ministry of Justice consultation on incentives and earned privileges policy framework

1 October 2018

The Ministry of Justice is consulting on the incentives and earned privileges policy framework.

Summary

1. The Howard League broadly welcomes some of the changes in the IEP policy framework especially the increase in opportunities for positive discretion.
2. Local innovation should be in addition to clear, consistent and enforceable minimum standards.
3. Inconsistency can create confusion and risks injustice when prisoners or officers are transferred to other prisons with different systems or incentives so it requires careful management.
4. The whole ethos and system of behaviour management in prisons needs to be reversed, away from a system based on punishments to one based on real incentives and expectations of positive behaviours
5. IEP policies must be fair and must be seen to be fair.
6. Prisoners need to know what to expect and how to challenge decisions appropriately.
7. There should be separate policy for children that accords with domestic and international children's rights.

1. About the Howard League for Penal Reform

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 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.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- 1.3 Our legal team works directly with children and young adults in prison.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. Context

- 2.1 The Howard League welcomes some of the changes in the IEP policy framework, especially the increase in opportunities for governors to use positive discretion to encourage positive behaviour and incentivise prisoners to build on the skills they will need on release.
22. Local innovation should be in addition to clear, consistent and enforceable minimum standards.
23. There must be a balance between local innovation and creativity and consistent minimum standards across the prison estate. It will require skilful management if governors are given the opportunity to develop their own local privilege policies. Many prisoners will transfer from one prison to another in the course of their sentence. If prisoners feel that a privilege has been taken away from them as a result of a transfer to a prison with a different IEP policy, it could undermine the purpose of a system designed to encourage positive behaviour.

3. Purpose

- 3.1 The ethos and purpose of IEP in prisons needs to be turned on its head. Currently the system is largely based on punishment with few meaningful incentives to encourage and reward positive behaviour. Many prisoners are locked in their cells for hours on end, placed on restricted regimes with little to occupy them. In men's prisons, levels of violence, self-harm and assaults have reached new highs and prisons are becoming less safe according to her Majesty's Chief Inspector of Prisons¹.

¹ HMIP (2018) Annual Report 2017-2018 https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/07/6.4472_HMI-Prisons_AR-2017-18_Content_A4_Final_WEB.pdf

- 3.3 The use of punishments and the imposition of additional days for rule breaking in prison has increased. Research by the Howard League² showed a total of 359,081 days of additional imprisonment were imposed on prisoners in 2017 across prisons in England and Wales – the equivalent of 983 additional years of imprisonment. Additional days have more than doubled over the past three years. This has contributed to a deteriorating prison system by exacerbating overcrowding and producing a sense of unfairness among prisoners.
- 3.4 Some prisons such as Grendon do have an ethos and regime based on mutual respect and reward rather than punishment. Relationships between staff and prisoners at Grendon were described as outstanding by the Inspectorate in 2017³. Nearly every prisoner was on enhanced level. Grendon prison does not have a segregation unit and incidents of violence are infrequent. Issues are resolved without the need to resort to formal disciplinary procedures. The Chief Inspector of prisons noted ‘the values, principles and practice seen at Grendon could provide positive lessons and inspiration for other prisons’.
- 3.2 The Howard League welcomes the statement of purpose in the policy, to ensure that prisoners engage with their rehabilitation and positive and responsible behaviour and personal progression is incentivised. A cultural change and a move away from the use of punishment are needed across the prison estate if this purpose is to be fulfilled.

4. Evidence

- 4.1 Evidence on the use of effective incentives schemes is a welcome inclusion and helps to underline the positive tone of the policy. There is a clear statement in the policy that ‘positive reinforcement is more effective at shaping people’s behaviour than punishing them’ (para 3.3). The policy also refers to the challenges that can result from punishment such as aggression and damaged relationships with the punisher (prison staff).
- 4.2 The Howard League welcomes the inclusion of information for prison staff on how effective schemes can encourage good behaviour. This includes the point that ‘increasing desirable behaviour is the main focus of the scheme rather than punishing poor behaviour’ (para 3.4).
- 4.3 Evidence to support an effective rewards-based system and show why a system based on punishments does not work is a welcome addition.

5. Outcomes

- 5.1 The Howard League welcomes the inclusion of point 4.4 which states that local privilege policies must be ‘perceived (by prisoners and staff) as being fair, consistent and non-discriminatory’. Small things matter to prisoners and it is important that prisoners know what to expect and how to challenge appropriately.
- 5.2 The Howard League is concerned that Outcome 4.10 (“Local privilege policies command public confidence as being appropriate”) could unduly deter Governors from

² The Howard League (2018) the Rising tide: additional dys for rule breaking in prison <https://howardleague.org/wp-content/uploads/2018/08/The-rising-tide-Addtional-days-for-rule-breaking-in-prison.pdf>

³ HMIP (2017) report on unannounced inspection of Grendon prison <https://www.justiceinspectores.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/09/Grendon-Web-2017-1.pdf>

developing positive incentives for fear of public reaction, which would undermine the whole spirit of the scheme.

6. Legal requirements

- 6.1 In the context of a policy that grants a wider discretion as to privileges it is essential that the minimum legal requirements are not set out merely by listing relevant statutory provisions but clearly set out what is required by law.
- 6.2 The Howard League would be happy to discuss this further once the policy has been revised and the ambit of the policy has been clarified.
- 6.3 There should be separate policy for children that accords with domestic and international children's rights

7. Privilege scheme structure

- 7.1 The revised policy removes the controversial 'Entry level' introduced in 2013. Entry level disadvantaged prisoners when they were at their most vulnerable. A Howard League report on preventing prison suicides found that prisoners on Entry and Basic level were being deprived of coping mechanisms at a time when they most needed it. Prisoners who have recently arrived in a prison are at greater risk of suicide. The abolition of Entry level is welcomed.
- 7.2 The revised policy gives prison governors the discretion to choose how the three levels will be referred to and create additional levels above Enhanced. This will result in different prisons having different names and levels. This has the potential to cause confusion amongst prisoners who have been transferred, especially younger prisoners or prisoners with learning difficulties and/or mental health needs. The policy will require skilful management to reduce the risk of confusion and other adverse consequences.
- 7.3 Skilful management will be required to ensure that the addition of levels above Enhanced does not undermine the system of positive rewards to encourage people to progress to Enhanced level, or make prisoners who have achieved Enhanced feel disadvantaged if they do not reach the additional levels.

8. Criteria for progression/downgrading

- 8.1 The policy gives governors greater discretion on the criteria for progression and downgrading. Any changes to the criteria must be clear and transparent. Prisoners have a right to know what to expect and what they are entitled to and how to challenge if they feel that the system is unfair. The criteria must also be clear for staff. Failure to ensure that the system is transparent and fair will create conflict and injustice.
- 8.2 The Howard League welcomes the broadly positive approach to progression and downgrading. Governors have more discretion and prisoners are not automatically downgraded if the governor determines it is not appropriate. However oversight is needed to ensure that power does not become more arbitrary, or is seen to be more arbitrary. In particular, prisoners need to be able to challenge downgrades that they perceive as unfair.

9. Reviews

9.1 The revised IEP policy states that it is best practice for prisoners to be reviewed before a transfer is made to another prison (para 7.27). However, in the revised IEP policy there is no longer a statement requiring that the prisoners “must be able to retain national key privileges” on transfer (IEP, 2013) and there is more emphasis on the fact that the privileges available at the receiving prison may be different from the sending prison. As in point 7.2 above, it will require skilful management to ensure that the IEP system is fair and is seen to be fair.

9.2 If the policy is to operate as intended in a flexible way, the option for regular reviews at the request of the prisoner will be essential. In particular, young people should be reviewed in a shorter period of time than older adults as it is well established that they are still maturing and capable of change in a shorter period of time.

10. Appeals

10.1 The revised policy allows the person considering the appeal to be the same level as the person who made the decision. The officer considering the appeal is therefore likely to have the same level of skill and experience as the decision maker.

10.2 As a matter of procedural fairness and good practice is it usual for an appeal to be determined by a higher body. This ensures that there is no concern that staff may not want to undermine colleague’s decisions.

10.3 Allowing colleagues to determine appeals could make it less likely that appeals will be successful and reduce prisoner confidence in the process.

11. IEP forum

11.1 There are examples of good practice in effective prison forums. These should be replicated across the estate. For example on a recent visit to Doncaster prison, we witnessed a forum which engaged staff and prisoners and included representatives from the governor to senior managers and prisoners with different backgrounds and experiences. Prisons such as Grendon have embedded engagement as part of the daily regime. User Voice has run prison councils. Forums must fully engage people and encourage participation to be effective; it is no good merely paying lip-service to equality and diversity.

11.2 There is nothing in the establishment of a IEP forum in itself that will monitor and guard against the risk of bias. The quality and analysis of key IEP data regarding outcomes and disproportionality or concerns raised by BAME and other prisoners or staff will be crucial in monitoring and preventing disproportionality in the IEP system.

12. Private cash

12.1 The Howard league welcomes the increase in private cash limits. Those on basic still need to be able access sufficient funds to function and progress in prison. Cash is required to maintain basic standards of living, health and dignity in prison: it is required for toiletries and maintaining contact with family and therefore the minimum entitlement regardless of privilege should be a decent amount just as in the community there is a minimum living wage. Five pounds a week is too little.

13. In-cell television

13.1 Giving governors discretion to allow prisoners on basic to use an in-cell television where it is considered to have a positive impact is welcome (para 7.13). Howard League research on preventing prison suicides⁴ reported that a disproportionate number of prisoners on basic took their own lives. Televisions, along with radios, books or hobbies have the potential to have a positive impact on the mental wellbeing of prisoners. The revised IEP policy recognises the need for discretion based on an individual's circumstances, for example for prisoners at risk of self-harm or suicide

14. Clothing

14.1 The revised IEP policy adds a requirement for women to wear prison issue clothing unless the governor uses their discretion to decide otherwise. The introduction of a prison uniform for all prisoners will be expensive, bureaucratic and degrading.

14.2 The Howard League provided an advocacy and support service for girls in prison, which included providing clothing such as underwear and coats for girls who did not have suitable clothing of their own or could not find any clothing that fitted them in prison spares. This was a frequent issue for girls and young women.

14.3 The cost of providing a wide range of sizes of prison uniform for women is likely to be extremely high. Failure to provide uniforms which fit appropriately and comfortably will be demeaning to prisoners and will impact on their self-esteem. This is a retrograde step.

15 Handing and sending in

15.1 The Howard League welcomes the clarification that Governors must allow books to be handed in or sent in (para 5.25). The Howard League led the successful Books for Prisoners campaign against the restrictions, set out in the revised 2013 IEP, on sending books in for prisoners.

15.2 It is our experience that there is still confusion on this issue in some prisons. The Howard League continues to receive letters from prisoners, advising that access to books varies from prison to prison: while some prisons follow the instruction given in Annex I of PSI 30/2013, others are said to be still imposing – incorrectly – a limit of 12 books for each prisoner, and at least one is said to have banned the sending in of books by family and friends. Prisoners have written to us to complain of delays in receiving books that have been sent in.

15.3 Letters from prisoners to the Howard League also suggest that there remains confusion among prison staff over the ordering of books through approved retailers. Some staff are said to have advised prisoners that Amazon is an approved supplier, when it is not.

15.4 Further confusion is caused by an unofficial website, which provides inaccurate information about the rules on sending books into prisons. The Howard League has been contacted by people who have followed this website's advice and had books returned. We have alerted the Ministry of Justice to this fact, but the website remains live.

⁴ Howard League and Centre for Mental Health (2016) Preventing prison suicides. London: the Howard League available at <https://howardleague.org/wp-content/uploads/2016/11/Preventing-prison-suicide-report.pdf>

16. Constraints

- 16.1 We agree that access to family days and showers should not be included in any local privileges scheme (paras 6.2 and 6.3). Decency and family contacts are rights.
- 16.2 Para 7.10 of the revised framework states that governors may consider incentivising prisoners with additional or improved visits. Governors will have greater flexibility to offer additional visits to prisoners on standard regime.
- 16.3 Family visits can be an emotive issue and using them as a means of controlling behaviour could create unnecessary distress for prisoners. The UNCRC states that the best interests of the child should be the primary consideration in matters relating to children. Governors must consider what is in the child's best interests. This includes the best interests of the children of prisoners as well as children who are prisoners.
- 16.4 Governors should be encouraged to be more creative with visits. For example, by introducing all day visits or private visits.
- 16.5 Prisoners also have a right to health: this should not be a privilege that has to be earned.
- 16.6 Para 7.11 states that governors may wish to increase the amount of time out of cell that prisoners are given to engage in recreational activities for those on higher levels of IEP. Para 7.12 states that access to exercise and well-being facilities above the minimum requirement for physical exercise could also be used as an incentive
- 16.7 The current minimum requirements of one hour per week of physical exercise for adults and 2 hours per week for prisoners aged under 21 fall way below the NHS physical activity guidelines for adults⁵.
- 16.8 All prisoners should have a right to maintain and improve their physical and mental health and this should not be part of an incentive scheme. Prisoners should have a right to go outside every day for fresh air and to take physical exercise at least two or three times a week in line with government health guidance.

17. Guidance

- 17.1 The guidance on reinforcing positive behaviours, rather than using punishment for undesirable behaviours is welcome. It should reduce the levels of conflict in prisons and make prisons safer for prisoners and staff.
- 17.2 Our research on adjudications⁶ reveals the negative impact of the excessive use of punishments on prisoners, on staff/prisoner relationships and on daily prison life.
- 17.3 The revised policy should be introduced alongside a reduction in the use of punishments. The effectiveness of individual prison IEP policies should be judged on whether they result in a reduction in conflict and in the number of adjudications and additional days.

18. Name of the policy

⁵ See <https://www.nhs.uk/live-well/exercise/>

⁶ The Howard League (2018) The rising tide: additional days for rule breaking in prison. London: howard league available at <https://howardleague.org/wp-content/uploads/2018/08/The-rising-tide-Additional-days-for-rule-breaking-in-prison.pdf>

18.1 The broadly positive tone of the new policy, based on rewarding positive behaviour, is welcomed. Whilst the existing policy title is positive we agree that some prisoners have a negative perception of IEP. It may help successful implementation of the new policy if the title is changed.

18.2 In other settings the phrase “rewards and recognition” is used and seen as a more positive way of framing incentive policies. We would like to suggest this as a possible new name.

19. Minimum review period

19.1 Para 5.12 of the revised policy gives governors more discretion regarding privilege level reviews but states that prisoners must be given a review at least annually. This is too infrequent for the majority of prisoners (see above).

19.2 Annual reviews are far too infrequent for children and young adults. Our work with children and young adults in custody has shown they should have the opportunity for regular reviews, at least monthly or sooner. The revised IEP recognises the importance of maturity. It states that ‘young adults are still maturing in ways that will affect their responses to IEP schemes’ (para 7.35). Governors must take into account maturity when considering the minimum review period.

19.3 A prisoner should be able to request a review when he or she considers it appropriate. In some cases, such as where young people are involved, this might be after a short period of time and certainly after weeks rather than months.

20. Children’s rights

20.1 There should be a separate IEP policy for children that accords with domestic and international children’s rights. An IEP policy for children will need to factor in for example the specific legal requirements to ensure that children have appropriate access to their family in accordance with Article 8 of the European Convention on Human Rights read with Articles 3, 37 and 40 of the UNCRC.

20.2 There is no reference in the revised policy to children’s rights or the special considerations that apply to children in prisons. It is unclear if the revised policy is intended to apply to children. It is essential that the applicability of the proposed policy is clear.

The Howard League
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