

## **Written evidence submitted by the Howard League for Penal Reform to the Justice Committee's prison governance inquiry**

### **Executive summary**

- There is a fundamental difference between governance and management
- Prison governors are called governors, but this does not mean that they provide governance; they provide management
- Recently, much attention has been given to the management of prisons. Prison governors are being given greater autonomy and more powers to commission services and education. The prison inspectorate's powers have also been strengthened
- There is a need, however, for better governance and the Justice Committee's consideration of this issue is welcome
- Prison governance could be greatly enhanced by the creation of new boards of governance
- These boards would provide ethical and strategic governance but also oversight
- These boards would comprise senior prison staff (including regional managers), the chair of the IMB, local authorities and other local stakeholders
- Improved governance is urgently necessary to address the critical state of prisons in England in Wales
- Establishing prison boards would strengthen links with local communities
- The rights and protections of prisoners must be maintained

### **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. We have some 12,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top 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 aim to 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 work.

1.3 Our submission, drawing on our policy work, proposes an innovative approach to prison governance, understood as distinct from prison management, in order to drive crucial change within the prison system.

## **2. Prison governance, as well as management, is badly needed**

2.1 The proposed terms of the inquiry as it stands pose important questions about the role of the prison governor and oversight in prisons. These questions present an opportunity to consider the fundamental difference between the roles of prison governance and prison management. To create meaningful change, the inquiry should look beyond the role of prison governor and seek to broaden the scope of governance to include stakeholders beyond HMPPS.

2.2 'Governance' must be understood as distinct from 'management'. Governance is concerned with 'doing the right thing', whereas management is concerned with 'doing things right' (IEG-World Bank 2007). The prison governor's role is managerial, concerned with the day-to-day operations of a prison. A layer of governance, entirely separate from the prison management, is needed to support the prison governor: to ensure that a prison is 'doing the right thing'. Good governance ensures that an organisation meets its objectives in a transparent, efficient and ethical manner.

2.3 The Howard League welcomes the increased powers recently granted to the prison inspectorate, including Independent Reviews of Progress (HMIP 2019) and Urgent Notifications (MoJ 2016), to improve oversight of the prison estate. These changes were much needed. Previously, failing prisons could wait up to five years for the next inspection. The inspectorate now has the ability to intervene earlier and more effectively either by issuing an Urgent Notification to the Secretary of State, which requires a response within 28 days, or through more frequent Independent Reviews of Progress, which monitor the implementation of the most recent HMIP report's recommendations.

2.4 Prison governors have recently been granted greater autonomy and more powers to commission services and education (MoJ 2016).

2.5 There remains a need, however, for better governance in prisons. Currently, a layer of governance that would provide much-needed oversight is lacking. We propose the establishment of boards of governance in prisons to provide further challenge and support to institutions.

2.6 The establishment of boards of governance for prisons, made up of representatives from the police, probation, local government, NGOs, health and education services, would support and reinforce the role of the prison governor and greatly enhance the fairness, accountability and efficiency of the prison estate. The composition of such a board would depend on the prison's function – a women's prison, for instance, might include a representative from a women's centre on the board. Similar boards of governance are in place in the charitable, public and private sector. Prisons should be no different.

2.7 The board should be made up of executive and non-executive members in order to bring external perspectives and independent oversight to complement inside knowledge and expertise. The board should include the chair of the independent monitoring board (IMB). It could also include some form of prisoner representation, possibly linking in with prisoner councils already established in some institutions.

2.8 A board would hold the governor to account by reviewing the response to reports and recommendations from inquests, Independent Monitoring Boards, Her Majesty's Inspectorate of Prisons and the Prisons and Probation Ombudsman.

2.9 A board would periodically review data around performance on areas such as safety and purposeful activity. It could also scrutinise the upholding of procedural justice, internal

punishments and referrals to external adjudicators that lead to the awarding of additional days of imprisonment. A record high of 380,169 additional days were awarded in 2018 (MoJ 2019b). This amounts to more than 1,000 years of additional imprisonment. Research by the Howard League (2017) has shown how the use of additional days as punishment only compounds levels of overcrowding and fuel a sense of injustice within the prison system. The Howard League report states that

‘Excessive use of extra days is indicative of poor leadership and governors and directors who are struggling to maintain control.’

2.10 A governing board would improve fairness in prisons. One of the seven principles of good governance is fairness – a principle that should underpin and inform all prison policies and procedures. Fairness within an institution is ensured by a participatory and inclusive governing body (IEG-World Bank 2007).

2.11 There have been recent calls for better governance to combat rising levels of violence and racial disproportionality in the prison system. In around two-thirds of the prisons inspected in 2018, HMIP found increased use of force on people in prison, and ‘significant gaps’ in the governance of this (HMIP 2018). The Lammy Review in 2017 also highlighted the need for better prison governance to address the differential treatment of BAME prisoners.

2.12 A board of governance for prisons would contribute to the effective long-term oversight of the prison estate. That oversight has been compromised by the high turnover of prison governors in recent years. Governors tend to spend no more than a few years in charge of a particular institution before getting moved on. In 2018, the average length of tenure for a prison governor was two years and six months (HoC 2019). This is lower than the average length of tenure - two years and eight months - for a prison governor between 1997 and 2006 (HoC 2006). High turnover at the highest levels of management creates inconsistency and instability, which a governing board could help to avoid, and provide much needed continuity in governance.

### **3. Prisons must strengthen links with local communities**

3.1 By linking prison governance more firmly to the local community, the autonomy of the prison governor (a government priority; MoJ 2016) would be bolstered. Local stakeholders would have a shared interest in successful reform and rehabilitation, and bring in relevant expertise and competencies.

3.2 The Howard League welcomes the inquiry’s focus on increased collaboration between prisons and the probation service. The inclusion of probation managers on a governing board would strengthen the cooperation between prisons and the probation service.

3.3 The inclusion of local authorities and community groups on a governing board would ensure that the collaboration between prisons and the probation service extended into the local community. For resettlement prisons, the inclusion of local businesses may also be possible and desirable.

3.4 We need a situation where governance operates effectively to achieve the right outcomes for people in prison and build safer communities.

### **4. The rights and protections of people in prison must be maintained**

4.1 The rights of people in prison must not be compromised by the recent changes (originally proposed by the government’s White Paper on Prison Safety and Reform 2016) to increase the

autonomy of prison governors. A board would temper the authority of the prison governor and supply a diversity of voices to better reflect the communities they serve, both inside and outside prisons.

4.2 The increased oversight provided by a board would further reinforce the protection of people in prison. As with hospital boards, the proposed board would have a legal responsibility to promote equality, diversity and human rights to staff and governors. This goes beyond legal compliance: a board would have a significant role to play in encouraging a transparent, diverse and inclusive institutional culture. Given recent, well-evidenced examples of corruption (Grierson 2019), non-disclosure (Private Eye 2019) and BAME disproportionality (Lammy Review 2017) within the prison system, this role is particularly crucial.

## **5. Recommendations**

5.1 This inquiry presents an important opportunity to broaden the definition of prison governance and to transform the way that prisons are guided.

5.2 A board of governance could provide one way to ensure that prison governance is effective, accountable and participatory. The board would be composed of executive and non-executive members and include figures from the police, local authorities and other stakeholders (including potential prisoner representation). The inclusion of representatives from probation would encourage collaboration between prison and probation services, one of the stated aims of the inquiry.

5.3 Innovative approaches to prison governance are urgently needed to ensure that the prison estate is responsibly governed as well as effectively managed.

## **6. Conclusion**

6.1 The Howard League recognises the importance of this inquiry and would welcome the opportunity to discuss its terms and approaches with the Justice Committee.

The Howard League for Penal Reform  
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