
PRISON GOVERNANCE - Part 2

First Report of Session 2019–20

House of Commons Justice Committee

3 COMMISSIONING SERVICES IN PRISONS

93. The role of the governor has changed since 2016, particularly with regard to commissioning and governance arrangements across healthcare and education sectors. There is now an increasing need for cooperation and collaboration. Many prisons have multiple organisations providing different types of services across the healthcare and education sectors.

Healthcare in prisons

94. Since 2003, healthcare for prisons in England has sat within the remit of the Department of Health and Social Care and its delivery agencies, NHS England and Public Health England. NHS England is responsible for commissioning healthcare for people in prisons in England. HMPPS is responsible for providing a safe and decent custody environment, including aligning the delivery of health and non-health-related services within establishments. The National Prison Healthcare Board for England was established by the Ministry in 2013 and has responsibility for the oversight and ongoing management of the National Partnership Agreement and the delivery of the partnership's shared objectives. More information on this can be found in this table

National Partnership Agreement for healthcare in prisons

There are five signatories to the National Partnership Agreement, each with defined roles and responsibilities:

- Ministry of Justice: responsible for justice and prison reform policy, oversight and sponsorship of HMPPS;
- HMPPS: described as a Health Service Co-Commissioner and Prison Service provider—responsible for providing a safe and decent custody environment for staff and prisoners;
- Public Health England: responsible for providing evidence-based, scientific expertise, public health service provision, and surveillance;
- Department of Health and Social Care: responsible for Health Policy and commissioner for prison public health services; and
- NHS England: direct commissioner of healthcare for people in prisons.

Source: HM Government, National Partnership Agreement for Prison Healthcare in England 2018–2021, April 2018

The role of the governor in the provision of healthcare

95. The 2016 White Paper proposed that a joint approach to commissioning health services across England be introduced, where governors would take a joint responsibility at each stage of the commissioning cycle. This joint approach would involve governors in co-designing service specifications, appointing health providers and a key role in performance and quality management of services. The National Partnership Agreement refers to HMPPS as “Healthcare Co-Commissioners”.
96. A number of our witnesses disagreed with the description of HMPPS as co-commissioner and challenged the extent to which governors are involved and have influence in commissioning. The Royal College of Psychiatrists felt that governors’ involvement in healthcare had become more limited over time and that the degree of involvement of governors in healthcare management “varies considerably from prison to prison.” Dr Ian Cumming, Consultant Forensic Psychiatrist, echoed this, saying that “the governor moving away from being more centrally involved has been a bit of a loss. Governors had more flexibility in the past to develop things.” Andrea Albutt said that it was “wholly untrue” to describe governors as core commissioners of health services, saying that they remained ‘influencers’. Digby Griffiths, Executive Director, Safety and Rehabilitation, HMPPS, also described governors as influencers.
97. The National Partnership Agreement refers to HMPPS as co-commissioners, but governors expressed frustration that they felt they were held accountable for healthcare when it was not technically their responsibility. One governor estimated that they had only 2% influence over which healthcare provider was commissioned in their prison. Others provided examples of where it was unclear which organisation was accountable; we heard of instances where there had been disputes between the prison and healthcare provider over who was responsible for providing constant supervision for prisoners with mental health needs. Digby Griffith explained that “Accountability for the quality of the healthcare resides with the provider and the commissioner of that healthcare. The accountability for the environment in which that healthcare is delivered is held by the governor.” He said that where disputes existed, they could be escalated up to the National Partnership Board; he emphasised they were trying to take a position of shared ownership.

98. The need for partnership working and teamwork was emphasised by many as a key driver in successfully delivering healthcare in prisons. Dr Sarah Bromley, National Medical Director, Health in Justice, Care UK, described the governance structure for healthcare as a partnership arrangement, emphasising that “It is only when that partnership is working well that we can start to deliver. When the partnership does not work well, it starts to fall over.” Michelle Jarman-Howe, Executive Director, Public Sector Prisons South, HMPPS, said that “One of the core roles of the governor is to orchestrate a wide range of providers, partners and stakeholders who operate in prisons, which are very complex environments.” She emphasised that it was a governor’s responsibility to bring services together.
99. NHS England told us that they had produced a comprehensive paper in 2018 to help governors understand the commissioning process, enabling them to support the process from an informed point of view. The Ministry are responsible for circulating this, but NHS England said that “there has been no further information as to the status of this document or intentions to disseminate.” When asked what training, support and guidance HMPPS gives governors on the management of healthcare in their prison, Digby Griffith said “probably not enough”. It is clear that governors are not in reality “co-commissioners” of healthcare. For governors to play an effective and influential role in the provision of healthcare, they must work effectively in partnership with healthcare colleagues. There is a risk of inconsistency in the quality of provision across the estate, depending on the quality of those partnerships. *We recommend that the Ministry work with NHS England to ensure that effective guidance and training is in place to support governors develop high-quality partnerships with healthcare providers and commissioners.*

Healthcare and the wider regime

100. The need for strong partnership working is exemplified by the symbiotic relationship between healthcare and the wider prison regime. Digby Griffith emphasised that “one of the issues that will make healthcare very difficult to provide is a badly run prison where there are difficulties, where there are not enough staff and where there are drugs coming into the prison. The governor has a responsibility to tackle those issues, and to provide an enabling environment where

good-quality healthcare can be provided.” Effective information-sharing was also emphasised by several witnesses as an important part of delivering good healthcare. Dr Bromley told us that she was not confident that governors had access to healthcare data that was shared between healthcare providers and NHS England. Digby Griffith said he expected “governors to ensure that information is being shared at proper strategic and tactical levels within the prison, and that there is a coming together of information about any individual prisoner.” *In response to this Report, the Ministry and NHS England should set out the steps they are taking to improve information sharing between Prison Service staff, healthcare providers and health commissioners.*

101. Dr Bromley also emphasised the problem of inexperienced staff and the impact this can have on patients reaching healthcare appointments. She said that staff working for Care UK saw about 50,000 patients a month, but a further three or four thousand appointments were made but not attended. Dr Bromley noted that “There was a loss of the healthcare officer role, as healthcare professionals took over healthcare in prisons. There was a good argument for that in some ways, but the loss was in having experienced prison officers who understood how healthcare operated and what the priorities and their roles were.” She called for improved training on responsibilities in relation to healthcare. Dr Cumming emphasised “that it may seem fundamentally wrong to have prison officers doing the job of healthcare, but they certainly have a role to play.” The Health and Social Care Committee, in its report *Prison Health*, also expressed concern about the number of missed healthcare appointments. We agree that governors and prison officers play a vital in facilitating healthcare. *We recommend that HMPPS reviews the training available to ensure that prison staff fully understand what their role is in relation to healthcare and how they can support its provision.*
102. We are concerned about the impact that missed appointments might be having on prisoner health, but we are unclear of the impact because HMPPS does not publish performance data on missed appointments. *This is something that was originally envisaged in the 2016 White Paper and we recommend that such a measure is included in the Prison Performance Tool. It should also set out the steps it is taking to reduce the number of missed appointments.*

Drugs in prisons

103. The issue of drugs in prisons is a good example of where collaboration between HMPPS and health professionals is required to make progress on a key strategic issue. In the 12 months ending in March 2019, 10.4% of Random Mandatory Drug Tests (RMDTs) were positive, a decrease of 0.5 percentage points since the 12 months ending in March 2015, but still the second highest annual rate since 2005–06 when 10.3% of tests were positive. Dr Bromley said that the influx of new psychoactive substances (NPS) into prisons had been a “game changer”, adding “One of our prisons had up to about 35 alarm calls last month, largely around NPS usage. Of course, if our nursing staff are resuscitating people or going to see people who are acutely under the influence of drugs, they are not able to deliver the routine clinics. That has a big knock-on effect.”
104. The Ministry published its prisons drugs strategy in April 2019, more information on which can be found in Box 5. In July 2018, the Ministry announced a joint HMPPS, DHSC and NHS England £9 million Drug Recovery Prison pilot at HMP Holme House to tackle drugs in prison and help prisoners to build their recovery. NHS England told us that results yielded so far were largely positive, for example ambulance attendance has fallen from approximately 40 per week to zero since the introduction of an on-site paramedic. They noted that they had identified ongoing funding for the Drug Recovery Prison and for sustaining the programme through shared learning, but noted that the Ministry “are not currently able to commit to this pending the outcome of any future spending review.” *Now that the Spending Review has been announced, the Ministry should set out what funding will be available to the support the drug recovery pilot, as well as the sharing of good practice at other establishments.*
105. The Chief Inspector of Prisons, Peter Clarke, noted that the Inspectorate was still finding prisons without a “coherent or comprehensive drug supply reduction strategy.” The Ministry’s Drugs Strategy says that “all prisons will have implemented their own Drugs Strategy, tailored to their specific needs and challenges, by September 2019.” We are concerned to hear that the Inspectorate is continuing to find prisons without any proper drug strategy, which was a clear commitment in the Ministry’s own overarching strategy. *The Ministry should set out the steps it is taking to ensure all prisons have a drugs strategy in place, as well as how it measures the quality and effectiveness of individual strategies.*

106. A number of our witnesses emphasised the need for more body scanners across the estate to prevent the entry of drugs into prisons. The Prison Governors Association said that body scanners remain elusive across the estate; Sir Richard Heaton told us that of the 118 prisons in the estate, 25 have body scanners. The Secretary of State told us that in the closed estate “there is a clear crossover between the need to check at the gate and scan at the gate, staff as well as prisoners, sadly, in order to make prison a safer place. We are seeing some good results in the use of scanning equipment.” He said that there was evidence to suggest they were a worthwhile investment, noting that it was not a significant outlay compared to other technologies. Phil Copple, Director General for Prisons, said that a “number of millions in single figures would enable us to put them across all the category B local prison estate”. The Government announced in August 2019 that it was making £100 million investment in security in prisons, including putting x-ray scanners into prisons across the estate. We welcome the Government’s announcement that funding will be available to install x-ray scanners across the prison estate. *Given the Secretary of State’s comments that such scanners will be more effective in some parts of the estate than others, we would welcome further information about how many and which types of prisons will have scanners installed in them, as well as when the Ministry expects these to be installed by.*

Education in prisons

107. Responsibility for prison education in England transferred from the Department for Education to the Ministry in 2016. Since then there has been a series of significant pieces of work into prisoner education, beginning with Dame Sally Coates’ independent review into prison education, *Unlocking Potential*. This advocated a greater role for governors, including “new autonomy in the provision of education, and to be held to account for the educational progress of all prisoners in their jails.” The Ministry published its Education and Employment Strategy in 2018, which made the commitment that governors would be fully in charge of education. The Strategy said that governors would “commission the providers and manage its delivery.”
108. In April 2019, existing arrangements were replaced by two primary vehicles: The Prison Education Framework (PEF), covering core education provision, including provision of a core curriculum and the

Dynamic Purchasing System (DPS), covering more niche and localised provisions. Our witnesses broadly welcomed the changes, although the Prisoner Learning Alliance noted that while the “new arrangements have the potential to deliver improvements, there are many areas where progress is too slow.”

The Prison Education Framework

109. Under the PEF, prisons are grouped into lots of 17 geographical areas. All contracts are let centrally and managed locally by governors. All 17 lots have been awarded to four providers: the same four as under the previous system. The Ministry says that the Framework is designed to “enable governors to commission bespoke education in their own establishments quickly and with minimal bureaucracy.”
110. Our witnesses told us about the extent to which governors would be able to influence the new education contracts. The Prisoner Learning Alliance said that “the new contracts, in theory, have built-in flexibility as if a governor finds that a service is not being delivered through the PEF, they will be able to take action easily, holding the provider to account and asking for an improvement plan. Ultimately, if the provider fails to take action to improve the service, they could lose 5% of their budget for the next quarter.” However, Serco noted that where its prisons were included in the PEF, it has limited ability to influence the provider.²⁰⁷ Francesca Cooney, Head of Policy at the Prisoners’ Education Trust, said that “It is a bit more complicated because the education contracts are run at lot level, which is between four and 10 prisons. A group of prisons is part of that contract, and it is a contract that is being monitored across the lot.”
111. We discussed how education providers would in practice be held to account; Chris Emmett, Director of Strategy, Prison Education, Weston College, said that this was the role of both the governor and the contracts team in the Ministry. Francesca Cooney added that “It should be possible for a contract to be breached prison by prison, so it should be possible to penalise a provider because of their service provision in one prison rather than the rest of the prisons in that lot. All those decisions, even if they are initiated by a governor, will be signed off by MOJ contracts team.” One governor we met emphasised that the new system has resulted in collective autonomy, as prisons are grouped into lots under one contract. The Ministry says that the contracts will

be managed through a hybrid contract management model, where the contracts are managed at prison and lot level with the support of a central team. The national contract management team manages the relationship with the provider at a national level.

112. There was also a lack of clarity as to how governors would be held accountable for education in their prisons. Francesca Cooney said that there will be assessment data in core areas, such as maths, but in “terms of outcomes that are more connected to progression and more detailed achievement, we are waiting to see how that is going to be implemented.” She noted that governor responsibility for these areas was unclear, as accountability measures had not been finalised, but thought they might be implemented by the end of 2019. The Ministry says that it is currently developing an education performance measure. We are concerned to hear that the new arrangements for education provision have been launched without clarity about what governors are responsible for, nor clear measures to hold governors and service providers to account. *The Ministry should set out the performance measures that will be used to hold service providers and governors to account. We also seek further detail about how prisoner progression is going to be measured.*
113. A number of our witnesses raised concerns about the lack of training and support for governors to help them in their new role. Francesca Cooney said governors were not yet equipped to be responsible for education. She said “The training on managing the contracts happened far too close to the start of the contracts. There was a push to get the contracts into place without the infrastructure being there. The HMPPS team to support the process was also put in place too late, and its roles and responsibilities are still being developed and ironed out. The regional structures are still being finalised in terms of supporting prisons with the legal and technical support that they need to do the commissioning.” Chris Emmett added that the extent to which governors and heads of learning were versed in education varied. The Ministry says that significant support has been put in place for governors, including contract management support at both a local and national level.
114. The Prisoner Learning Alliance told us that it had “recently carried out a survey of prison governors and senior managers in the run up to the new education contracts. We received 60 responses. Overall too few respondents (five) felt prepared enough for the start of the new education

contracts on April 1st 2019. Only ten respondents felt their staff team had the skills and knowledge needed to manage the contracts and ten staff felt they were getting good support from their region or the centre.” We welcome the changes to education provision and believe they represent an opportunity to deliver positive change to support the rehabilitation of prisoners. However, we are concerned to hear that some governors do not feel they have the skills or support to manage the new education contracts and this represents a real risk to the long-term success of the new arrangements. *We recommend that the Ministry urgently review the training and support available to governors and their teams and the extent to which this training has been received.*

Dynamic Purchasing System

115. The second part of the new education arrangements is the DPS. The DPS is designed to enable governors to commission bespoke education directly from suppliers registered to the system to meet specialised learning needs. This is in addition to the core service provided through the PEF. As at 19 July 2019, the total value of contracts awarded under the DPS is £7.65 million. Francesca Cooney said that the Prisoner Learning Alliance had received overwhelmingly negative feedback from governors, prison staff and service providers about the DPS.
116. DPS contracts are awarded for only one year and several witnesses said that this was too short. The Prisoner Learning Alliance explained that this can act as a disincentive to both prison staff and service providers because of long lead-in times and security vetting, which can take a few months. The NPC said that one-year contracts leave charities that provide services vulnerable and can undermine quality of service. There is clear evidence to suggest that small providers need longer-term contracts to offer them security. *The Ministry should review the arrangements for awarding contracts under the DPS to enable contracts of longer than one year to be offered.*
117. Witnesses also emphasised the complexity of submitting and reviewing bids under the system, as well as the length of time it takes for both prison staff and service providers to review and submit bids. Clinks said that the system is too complex and requires too much resource to be valuable to small organisations, when contracts are worth relatively small amounts of money. Francesca Cooney told us that prison staff wanted more training, noting that “It takes far too much time for them

to be able to get on to the system and process the information. They are getting conflicting advice from different specialists about how they can use the tenders, and what they are allowed to tender for.” The Ministry says that it held training and information events leading up to and since the launch of the DPS, as well as hands on training for staff using it.

118. As part of its proposed reforms to the probation system, the Ministry has proposed a dynamic framework for resettlement and rehabilitative interventions so that it can access the full range of specialist services and interventions available. It cited the DPS for prison education as an example of a similar system.
119. The DPS was intended by the Ministry to give prisons access to suppliers that are able to meet the bespoke educational needs of their establishment and offers a flexible route to services that add real value. However, we are concerned that the roll-out of the system has had the opposite effect, acting as a disincentive to governors to tender for services and to service providers to apply for them. *The Ministry should urgently review how it can make the DPS more accessible and less time consuming for service providers and prison staff. We note that a similar system is being considered for the probation system; the Ministry should ensure it undertakes a full evaluation of the roll out of the DPS before it introduces a similar initiative as part of its probation reforms.*

Education within the prison setting

120. Witnesses emphasised to us the importance of education being properly integrated into the rest of the prison regime. Paul Cottrell, Acting General Secretary, University and College Union, told us that “The prison regime always comes first and controls the education. The need to integrate education provision with the regime is the really big challenge that we have never got right, and I think it is probably getting worse, rather than better.”
121. Chris Emmett emphasised the need for a whole prison culture to develop. She noted the important role that prison staff play in supporting prisoners access to education, explaining that “If a wing officer does not understand why it is important for a prisoner to do English and maths, or learn to do brickwork, he goes to the cell and goes, “Education? No, not this morning,” and just shuts the door again. Everyone has a part to play, and if it is valued, it helps to get the prisoners there.” Paul Cottrell agreed, saying that “If prisoners are engaged in purposeful and satisfying

activity, their social and communication skills improve. Their self-respect improves, and that will affect the whole culture of the institution and behaviour in the institution more broadly. It is actually in the interests of prison officers to understand and support education. That needs to be built into their training, just as it does into the governor's training." He expressed concern that the success of the new arrangements would depend on governors' interest in and commitment to education. Chris Emmet emphasised that it was easier for governors to focus on education if areas, such as safety and decency in the prison, were stable.

122. Education in prisons is an important part of the regime and the Ministry needs to ensure that it retains a focus on this, and other purposeful activity, as well as safety and decency in prisons. *We recommend the Ministry reviews the training available to prison officers and governors to ensure they are best able to support prisoner's access to education.*

Healthcare and education in Welsh prisons

123. HMPPS in Wales works in partnership with the Welsh Government to deliver offender management services. While the UK Government has responsibility for prisons in England and Wales, the Welsh Government has responsibility for devolved matters that intersect with criminal justice, such as prison healthcare and education. The Welsh Government is responsible for the overall delivery of health services in public sector prisons in Wales. Healthcare is provided by NHS Wales and delivered by Local Health Boards, who are responsible for commissioning mainstream healthcare services. In their report, Prison provision in Wales, the Welsh Affairs Committee raised concerns that difficulties in the coordination between HMPPS and NHS Wales meant that healthcare needs were not being addressed.
124. In 2009, the UK Government transferred further powers and functions to the Welsh Government in the area of prison education. As a devolved matter, it requires cooperation between UK and Welsh Governments, but in his review, *Reforming Outcomes: A Review of Offender Education in Wales*, rt hon David Hanson MP, a member of this Committee, concluded that "the Welsh Government has a tremendous amount of power in bringing people together and they should utilise it more to reduce barriers between prisons, individuals and organisations." The review made 22 recommendations. The Welsh Government responded on 21 March 2019 and have produced a full response. They are currently implementing the recommendations.

4 THE ROLE OF HMPPS AND THE MINISTRY OF JUSTICE

The relationship between HMPPS and the Ministry

125. In April 2017, HMPPS replaced the National Offender Management Service (NOMS), with the intention of creating an operationally focused organisation with prisons policy set by the Ministry. The then Secretary of State, Rt Hon Liz Truss MP, noted that “HM Prison and Probation Service will have full responsibility for all operations across prison and probation. The Ministry of Justice will take charge of commissioning services, future policy development and be accountable for setting standards and scrutinising prison and probation performance.”
126. This reflected one of the key features of the 2016 White Paper, which set out a change in the relationship between the Ministry and the Prison Service. The White Paper envisaged a system where:
- the Secretary of State reviews the overall performance of prisons and makes decisions on priorities and resources based on this;
 - a funding formula allocates resources to prisons based on their function;
 - each prison negotiates an appropriate performance agreement; and
 - mandatory basic requirements are set in order to ensure prisons are secure, safe and decent and run in accordance with the law.

Effectively, these reforms entailed a direct relationship between the Ministry and governors, with Ministry commissioners setting detailed performance expectations for individual prisons and prison groups. The reforms were due to be codified as part of the 2017 Prisons and Courts Bill, but this fell before the 2017 general election.

127. In June 2018, the then Prisons Minister, Rt Hon Rory Stewart MP, wrote to us setting out a further change in the relationship between the Ministry and HMPPS. He concluded that the “level of involvement in the detail of individual prisons’ performance sits better with HMPPS through its internal line management chain. Ministers and the MoJ can better drive overall performance of HMPPS against key, national-level metrics. This means that the commissioning relationship described in the White Paper will be amended and we will move to a new performance model that increases the direct accountability of HMPPS to Ministers”. The new model means that high-level strategic priorities are set by ministers and HMPPS is responsible for prison performance.

128. Sir Richard Heaton, Permanent Secretary of the Ministry, wrote to us in November 2018, setting out further changes to the management of the prisons system. He created two Director General roles, one for prisons and one for probation, to support the Chief Executive of HMPPS. He also announced that some policy functions would revert to HMPPS, having previously been centralised into the Ministry following the abolition of NOMS.
129. Dr Harry Annison, Associate Professor in Criminal Law and Criminology at Southampton Law School, described the continual change in governance structures as pendulous swings between two approaches: the fusion or separation of policy making and operations. He argued that a common theme in relation to a range of recent policy initiatives pursued by the Ministry has been the disconnect between policy development and operational knowledge, explaining that “It is essential that professional expertise and practical/operational knowledge is recognised as a crucial form of evidence that should inform policy development; and that practitioners are empowered to engage on policy development, to be heard, and in particular to debate the starting assumptions that often tend to determine final policy outcomes.”
130. A number of our witnesses expressed continuing confusion at the split in responsibilities between the Ministry and HMPPS. The Prisoner Learning Alliance identified significant overlap between what civil servants in the Ministry and HMPPS are doing, with different policy teams working on the same areas without this being clearly coordinated. The Prison Governors Association welcomed the return of operational policy to HMPPS but expressed concern that there remained a lack of clarity as to what responsibility sits with the Ministry and HMPPS respectively.

The role of the Prisons Minister

131. Since 2010 there have been seven prison ministers, and different ministers have interpreted how to fulfil their role effectively in different ways; this has had implications for the overarching governance structure for the prison system. When giving evidence to the Committee on HMP Liverpool, Rt Hon Rory Stewart MP set out how he saw his role, saying that “One of the problems has been that we have set up an indirect model where the Ministry commissions and an agency delivers. For better or for worse, I do not know whether this is true in this Department,

Ministers sometimes feel it is not their job to get into operational details. They set the grand strategic policy. I disagree. I think this is an operational job and I have responsibility to make sure prisons are clean. In order to do that, I need to get into the prisons and I need to ask difficult questions about the reports.”²⁴⁶ Rt Hon Robert Buckland QC MP, the now Secretary of State for Justice, told us when he was the Prisons Minister that “I am not here to run every prison operationally, but I am here, I hope, to set a clear steer to the civil servants about what I expect to be done.” The Prison Reform Trust emphasised the need for continuity in leadership, saying that operational reform “cannot be delivered by the minister but only by suitably devolved authority to an expert and dedicated professional head. Agency status, as originally conceived, sought to enshrine this basic division of responsibilities. It is manifestly not being interpreted in that way at present.”

132. Accountability starts at the top of any governance structure and there needs to be absolute clarity as to the respective responsibilities of the Ministry, and by extension the Minister, and HMPPS. The Prison Service needs a period of stability to deal with the many challenges it faces and constantly changing who is responsible for what, with ever more complicated arrangements, is not helpful in this endeavour. *We recommend that the Ministry clarifies the split in responsibilities between itself and HMPPS, particularly in relation to functions delivered by policy teams.*

The 10 prisons project

133. In August 2018, Rt Hon Rory Stewart MP announced a £10 million investment in the ‘10 prisons project’, which piloted new approaches to standards of security in 10 of the most challenging prisons in England and Wales. The Minister pledged to resign in a year if violence and drug misuse had not improved in those establishments. The Prison Reform Trust described the initiative as novel because of the close personal involvement of a minister in the operational management of those prisons. When we met governors, all agreed that the investment was welcome, but a number raised concern that the project had resulted in resources being diverted from other prisons in need.
134. The results of the project were announced in August 2019. The rate of assaults per 1,000 prisoners in the prisons dropped by 16%, compared to a national decrease over the same period of 8%. However, in three of

the 10 prisons the rate of assaults per 1,000 prisoners increased. Phil Copple reflected that there were some lessons to be learned from the project. He said: “We probably, in some respects, threw too much at some of those prisons early on, so they were getting lots of people coming in, but in a way that was not sufficiently sequenced or co-ordinated.” The Secretary of State said the next steps, post evaluation of the project was “to focus on eight to 10 prisons that we think are most at risk, and do some intensive work with them over a fixed period with a control-room mentality, and to roll that out. Rather than having it as a one-off, we want to do it progressively over a number of years. I have 118 prisons in the closed estate to worry about. The 10 prisons project was an admirable way of focusing attention and getting some quick learning, but I want to achieve more in the wider estate over the next few years.”

135. We welcome the broadly positive results of the 10 prisons project. However, there were many aspects to the project, such as additional investment in leadership. The limited evaluation that was published provided no quantitative or qualitative analysis of the specific initiatives undertaken. The point of the project was to identify what works in terms of improving safety and decency in prisons, but it remains unclear exactly which parts of the project will now be rolled out across the rest of the estate and what funding is available to do this. *Now that the results of the 10 prisons project have been published, we recommend that the Ministry publishes further analysis of the relative success of the various initiatives undertaken, as well as providing details as to what is now being rolled out to other prisons in the estate and what funding will be available to do this.*

Oversight arrangements within HMPPS

136. A new delivery structure for HMPPS was introduced in April 2018 with Prison Groups and Prison Group Directors (PGDs), each of whom is responsible for the operational delivery and strategic development of around four to seven prisons and line management of prison governors. Previously, governors had been managed in much larger groups. In relation to our inquiry into events at HMP Liverpool, the former Chief Executive of HMPPS said that he accepted the previous level of oversight was not sufficient and this was one of the reasons for introducing smaller groups of prisons, to give PGDs “more resource to be able both to support governors and to ensure compliance across the requirements.”

137. The Prisoner Learning Alliance welcomed the move, suggesting it should mean that governors receive more support in their region and that equally PGDs would have a clearer idea of what was happening in their groups of prisons. However, the Prison Reform Trust was more critical, noting that “a Governor now has a chain of command above them containing at least four more senior levels in HMPPS, all wishing to be “assured”. Andrea Albutt was also critical of the current regime, saying that:

At a practical level, prison governors feel that they are under more scrutiny than ever. Prisons have been in a bad place for a long time, so the answer is, “Let’s scrutinise and assure more,” which is absolutely what they do. We have built a big factory of assurance above prisons, but in prisons they feel they are spending more time assuring than actually governing. It has become a real monster to feed. That is what governors report to us. The fact is that they are giving assurance. In many of our prisons, they are giving assurance that they are not able to deliver, but there is no resource to make things better.

138. Governors we met broadly welcomed the new group structure, where small groups of Governors are now managed by a regional Director. However, a number felt that the new arrangements brought additional support, but greater scrutiny. Several spoke of being required to constantly “feed the beast” of people above them in the chain of command wanting assurance. One said that although they had support from their PGD, they were under pressure due to the high level of scrutiny and demands for assurance on lengthy lists of hundreds of action points. Another commented that they were sometimes frustrated that they had to spend a lot of time explaining what they were doing rather than being able to get on with it. Jo Farrar accepted that “we have been told by governors that there is a lot of assurance.”
139. It is vital that HMPPS has an oversight structure in place that enables it to identify where problems exist and support governors. We welcome the introduction of the Prison Group Structure. However, any oversight structure must be proportionate and focused on outcomes. *We recommend HMPPS commissions a review to look at how its oversight structures can be streamlined to reduce the burden on governors and their teams, for example by condensing the number of requests for assurance.*

Performance monitoring

140. Public sector prisons are subject to a Performance and Assurance Framework designed to provide a process for the identification, management and improvement of underperforming prisons and prisons that are performing well. The Performance Management Framework for prisons looks at data against a range of measures being collected and monitored each month. Establishments are then assigned a place on a four-point scale, with level one for prisons of serious concern and level four for exceptional establishments.
141. The 2016 White Paper included a range of performance measures, many which have not been implemented. Appendix 1 sets out the current performance measures used by HMPPS in comparison to what was in the White Paper. We have previously called for a review of performance measurement statistics to properly monitor the amount of time prisoners spend outside their cells, as well as access to purposeful activity, such as education. The Ministry says it “already [has] plans to update our performance framework from 2020/21 to include offender Time Out of Cell and time spent on Purposeful Activity. This will also include the time offenders spend doing paid work on Release on Temporary Licence (ROTL); and the time spent in education to assess attainment in English and Maths.” The Secretary of State noted that he did not yet have information about time out of cell. Jo Farrar emphasised that purposeful activity is “something we need to know about.”
142. We had an interesting discussion with our witnesses about whether the amount of monitoring that HMPPS undertakes is appropriate. The Secretary of State told us that he did “not want to... swamp the service with requests for information that is a substitute for action.” Andrea Albutt felt that the performance measures in place were the right ones, but emphasised that prisons were not sufficiently resourced to achieve the targets set, saying that “if we were resourced to deliver all those things, we would have really good outcomes for prisoners. You can put in more scrutiny, more targets and more specific targets, but the outcomes will still not be achieved if you are not resourced.” Jo Farrar noted that she had started to review what performance measures were used: “We are looking at how we develop measures in a balanced and proportionate way, and how we do the right assurance but less of it, so

that we can put more money into improvement.” Phil Copple explained that to effectively measure performance in areas such as purposeful activity, a technological solution was required.

143. We recognise the need for any performance management framework or data collection to be proportionate, but we remain concerned about the lack of data available beyond prison safety and security. We welcome the Ministry’s commitment to introduce measures for time out of cell and purposeful activity in 2020–21. However, three years on from the White Paper, we call for a wider discussion about how prison performance is monitored and what data is collected. *We note that the Chief Executive has started to review what the right performance measures are and how prisons should be held to account. We recommend that this review engages with the widest possible group of stakeholders and considers what technological solutions are available to make data collection as accurate and resource-efficient as possible.*

The need for a whole prison approach

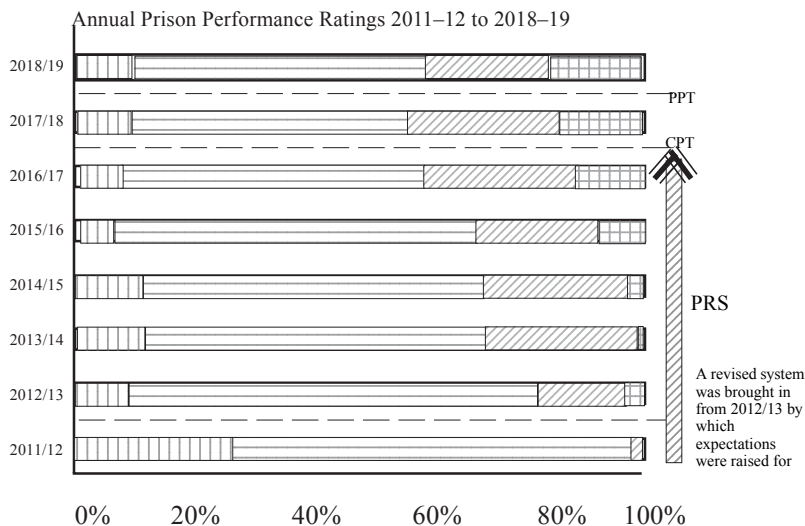
144. The White Paper proposed performance measures in relation to both health and education in prisons, including the number of medical appointments cancelled due to non-availability of prisoners and measures that assess a prisoner’s progress against milestones in their individual learning plan. However, as demonstrated in Appendix 1, there are no specific health and education measures in the current prison performance framework. The Prison Reform Trust said that there should be a suite of performance measures that require collaboration with partners, from health and education through to resettlement.
145. There is very little data related to health and education in prisons in the public domain. The performance of healthcare providers in prisons is measured using health and justice indicators of performance (HJIPs), however these are not published. NHS England, who are responsible for the HJIPs, told us that to enable data to be published there are a number of steps that need to be undertaken to ensure the quality and integrity of the data. It is currently working on defining data standards for prisons. This means there is no clear, public information on key information about the health of the prison population, which can often affect the performance of prisons. Digby Griffith, Executive Director for Safety and Rehabilitation, said that HMPPS is looking to “pull from those health and justice indicators owned by others and pool

them with some of our own indicators to create a package—a suite of measures that we can use across the five agencies [involved in healthcare in prisons].” He anticipated that this would be in place by the end of the financial year.

146. More progress has been made in relation to education in prisons, where the introduction of the Prison Education Framework should improve the data available and enable a core set of performance measures to be used by all prisons. Francesca Cooney, Head of Policy at the Prisoners’ Education Trust, said that “The assessment data will be a core set of data. You will be able to see who is being assessed in maths, in education, and progress there. You will be able to see screening for learning difficulties and disability. There is basic data that will be assessed across all prisons.” However, she noted that “In terms of outcomes that are more connected to progression and more detailed achievement, we are waiting to see how that is going to be implemented.”
147. HMPPS collects detailed data on safety in prisons and other aspects of prison life. As a result, many of the measures in the Prison Performance Framework are safety related. However, well performing prisons are not just those that are safe, but also offer a decent environment and rehabilitate the prisoners in their care. We welcome the steps being taken to improve data collection on health and education, but HMPPS needs to work with its partners to produce a suite of prison performance measures that cover all parts of the prison regime to give an overview of the performance of individual prisons as a whole. *We recommend that HMPPS works with its partners, including NHS England, to produce a performance framework that covers all aspects of prison life, including health and education. This should be reflected in the annual prison performance ratings.*

Performance Management

148. According to the 2018–19 Prison Performance Ratings, 37% of prisons were rated by HMPPS as having either performance or serious performance concerns. The equivalent figure for 2017–18 is 46%. Prisons of concern are either managed within their prison group through Performance Improvement Plans (PIPs) or will be put in special measures. If HM Inspectorate of Prisons has significant concerns about the performance of a prison, the Chief Inspector can invoke the urgent notification protocol.



Source: Ministry of Justice, Annual Prison Performance Ratings 2018/19, 25 July 2019. As the Prison Performance Tool is the result of a revised performance framework, direct comparisons cannot be made to performance ratings from 2017/18 derived through the Custodial Performance Tool (CPT), or to performance ratings before 2017/18 derived through the Prison Ratings System (PRS).

Special measures

149. A number of our witnesses were concerned about the effectiveness of the special measures used by HMPPS to support poorly performing prisons. As at 1 May 2019, there were 16 prisons in special measures, 14% of the total prison estate. Andrea Albutt gave the example of HMP Bristol, where the Chief Inspector invoked the urgent notification in June 2019; the prison had been in special measures for the two years before that. HM Inspectorate of Prisons raised similar concerns in relation to HMP Lewes, saying that although no urgent notification was issued, its inspection called into question the effectiveness of special measures. It explained that “Despite the prison having been in special measures for two years, scores had declined in three of our four healthy prison assessments, and failed to improve in the fourth (safety).” Peter Clarke wrote to us in July 2019, noting that the Inspectorate had inspected eight prisons where special measures had been in place for longer than six months. Of these eight, he stated that “scores improved at three sites, remained the same at two sites and declined at three sites”. He also called for absolute clarity as to who was responsible for making improvements, something which he felt was currently missing.

HMP Bristol

HMP Bristol has declined over four inspections since 2013, with safety assessed as poor, the lowest grading, in 2017 and 2019. In April 2017, HMP Bristol was placed in 'special measures' by HMPPS. Despite it being in special measures, the Chief Inspector of Prisons invoked the Urgent Notification protocol for the prison in June 2019, citing among others the following reasons:

- recorded violent basic furniture. A bulk order of new furniture had been placed in January 2019 but had still not arrived.
- social care arrangements were still completely inadequate, leaving several prisoners we observed with unmet care needs.
- there remained a substantial backlog of maintenance work, infestations of cockroaches were common, and many cells lacked sufficient basic furniture. A bulk order of new furniture had been placed in January 2019 but had still not arrived.

Source: Letter from Peter Clarke CVO OBE QPM, HM Chief Inspector of Prisons, HM Inspectorate of Prisons to The Rt Hon David Gauke MP, Justice Secretary, Ministry of Justice, Urgent Notification: HM Prisons Bristol, 11 June 2019

150. A lack of resource to support the number of prisons in special measures was cited as one of factors inhibiting their effectiveness. Phil Copple noted that “There is an element in the scale of the operational challenges that has meant that we have not been able to do as much for every single place in special measures as we would like to, because there were more than a dozen of them at one point in time.” He said that in the case of HMP Bristol, resource had been prioritised but it was not enough to stop the prison having a poor inspection. He also emphasised the need for intensive support that works alongside local management for a period of time.
151. The Secretary of State accepted that there needed to be improvement to the special measures mechanism and HMPPS is currently undertaking a review of special measures arrangements. We welcome the review of special measures being undertaken by the Ministry. There is little point in identifying prisons as requiring additional support, if the resulting action does not result in improved performance. There must be sufficient resource available to support prisons that are struggling effectively. *We recommend that the Ministry publishes the results of the review undertaken by HMPPS and sets out the steps it will take to improve the support available to poorly performing prisons.*

Sharing good practice

152. We considered the extent to which current governance structures within HMPPS facilitate the sharing of good practice between different prisons across the estate. Andrea Albutt said that there was no formal strategy

for sharing good practice within HMPPS, but hoped that the prison group structure would be able facilitate this. The Butler Trust, an organisation which facilitates the sharing of good practice in the prison and probation sector, suggested it may be helpful if prison group directors were able to provide regular reports of good practice within their groups that could then be collated and disseminated across the rest of the estate.

153. Frances Crook, Chief Executive of the Howard League, suggested there needed to be a level of ethical oversight and scrutiny within the prison system. She thought the role of the College of Policing in the police might be a useful example. The College sets standards in professional development for all police forces and also commissions research into best practice. However, Philip Wheatley cautioned that “Currently there is sound operational knowledge of what good practice is, but a shortage of experienced front line staff, managers and up to date equipment to allow it to be successfully implemented in all the prisons that could benefit from it.”
154. The Secretary of State told us that one of his greatest frustrations is the fact that there is an inability to share good practice across the system, saying that “What might be good in one establishment is not necessarily understood across the service. There is a real sense now that that has to change, and is changing, and there is a sense of common purpose that we can do better.” The sharing of good practice is an important function of any governance structure and we agree with the Secretary of State that this is something that needs to improve. We often hear about some of the great work that goes on in individual prisons and would like to see this captured more effectively by HMPPS, so that it can be shared with the rest of the estate where appropriate. *We recommend that HMPPS develops a formal strategy for the sharing of good practice across the Prison Service and provides an update on the steps being taken to facilitate this.*

Oversight of private prisons

155. Thirteen prisons in England and Wales are managed by private sector companies. Three different companies operate these prisons: G4S, Serco and Sodexo. HMP Birmingham, run under contract by G4S, was brought back under public sector management in July 2019. More information on HMP Birmingham can be found in box 11. The combined operational capacity of privately managed prisons in England and Wales is around 16,000.

HMP Birmingham is a Victorian prison and was the first publicly built, owned and operated prisons to be transferred to the private sector. The prison was operated by G4S from 2011 before being returned fully to public sector management in July 2019.

In August 2018, HMIP conducted an unannounced reinspection of HMP Birmingham and identified a dramatic deterioration in its condition. The Inspectorate initiated the Urgent Notification protocol on 16 August describing a “near total failure to address ... previous recommendations” and “an abject failure of contract management and delivery.” Subsequently, on 20 August, the Secretary of State for Justice used his contractual ‘Step-In’ rights, removing the Prison from G4S’s control and placing it under the leadership of a governor from HMPPS.

Source: HM Chief Inspector of Prisons, Urgent Notification: HM Prison Birmingham, August 2018; Letter from Comptroller and Auditor General to the Chair of the Justice Committee, HMP Birmingham, 7 December 2018.

Contract management regime

156. Contracts between private prison providers and the Ministry are extremely complex. When the former Comptroller and Auditor General wrote to us in relation to HMP Birmingham, he noted that the contract for that prison was “an extensive and complex suite of documents comprising the main contract and some 30 detailed schedules, many with their own constituent parts and appendices.” Neil Richards, Director of Custodial Contracts, HMPPS, emphasised that in the past year HMPPS had “put in place completely new governance processes, and completely new assurance and performance management processes. We have piloted the strategic relationship management model, which we are about to roll out. We have invested £1.5 million in assurance and performance oversight.”
157. The role of the controller was identified as being particularly important in the contract management process. The controller is the Ministry’s on-site representative at each private prison and effectively monitors performance on the ground. Neil Richards said he had focussed on making it a dynamic role and a central part of the business. However, he accepted it had previously been seen as a role for people who wanted a break from a more demanding job in a public sector prison. Serco proposed to withdraw the controller role from individual prisons and replace it with smaller, regional peripatetic controller teams that visit all establishments. Sodexo said it felt that in general the controller role was effective, but emphasised the “sheer weight of compliance and assurance reporting” for private prisons.

158. However, several witnesses were concerned by the lack of flexibility within contracts and the contract management process. Transition to Adulthood said that “It is extremely difficult and expensive to change contracts for Prison Services and there is an understandable reluctance to do this. However, the mechanisms for responding to that can happen outside of the contract. This would ensure that the provider could be held to account effectively and quickly without the contract needing to be varied.”
159. We considered the provision of healthcare in five private prisons where healthcare is commissioned directly by HMPPS rather than NHS England, as with the rest of the estate. Neil Richards explained that when responsibility for healthcare transferred to NHS England it proved difficult to remove healthcare from some of the private prison contracts and therefore for those prisons it continued to be commissioned directly by HMPPS. He accepted the position was not ideal and noted there was discussions ongoing about how to rectify the position.
160. NHS England confirmed that the healthcare specifications in relation to those prisons are not the same as the specifications used by NHS England commissioners. It told us that it was in discussions about taking over commissioning responsibility in contracted prisons from HMPPS, although there is no agreed timetable. Governors we met as part of this inquiry also raised concerns that current arrangements meant that prisoners were receiving worse standards of healthcare.
161. It is unacceptable that healthcare in some private prisons is commissioned to a different specification than the rest of the estate and we are concerned that prisoners in some prisons may receive worse standards of healthcare as a result of this situation. It is important that contracts are flexible enough to adapt to changing circumstances and this issue should have been dealt with long ago. *We recommend that the Ministry sets out a timetable for rectifying this problem. It should also provide information about how HMPPS ensures that there is equivalence between the commissioning specifications it uses and those of NHS England.*

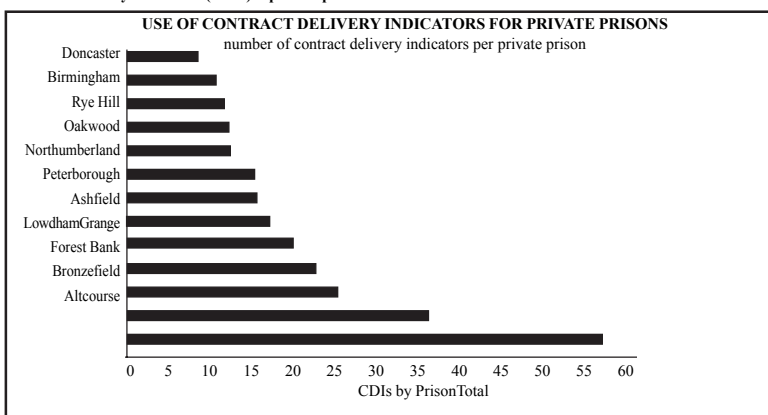
Performance measurement for private prisons

162. The performance of private prisons is measured through the Prison Performance Framework in the same way as public sector prisons, however in addition to this, each contract has contract delivery

indicators (CDIs) built into it with financial incentives. Therefore, if a private prison operator does not meet its target for a CDI, it may incur a financial penalty; Neil Richards estimated that total financial penalties for all private prison operators is about £1 million per year.

163. A number of witnesses suggested that CDIs differ between contracts, because of the age of the contract. The range of CDIs used can be seen in figure 6. Wyn Jones, Custodial Operations Director, Serco, said that some CDIs in older contracts used lots of input measures, some of which were not fit for purpose. He noted that the Ministry was undertaking work to look at what CDIs in future contracts might look like.

Contract delivery indicators (CDIs) in private prison contracts



Source: Ministry of Justice. Note that this graph does not include HMP/YOI Parc. HMP Birmingham is included, although it returned to public sector management in July 2019.

164. Several witnesses gave examples where CDIs resulted in perverse incentives. Janine McDowell, Chief Executive Officer, Justice Services, Sodexo, illustrated this in relation to contraband saying that “You can absolutely make the case that the more you find, the more successful you are at detecting contraband and doing your job properly. Equally, it can be interpreted that a failure of systems has allowed the contraband to find its way into the prison in the first instance.” She noted that some contracts, and the CDIs in them, were more than 20 years old.
165. We welcome the work being undertaken by the Ministry to review the contract delivery indicators (CDIs) to be used for future contracts. However, the fact that many of the current contracts use varying and

often out of date CDIs, seems to us an oddity that risks creating an unfair playing field where perverse incentives exist. *We recommend that the Ministry considers how it can ensure that future contracts have the flexibility to take into account changes in performance measurement standards as appropriate.*

The Prison Operator Framework

166. The Prison Operator Framework was announced in November 2018. Once on the framework, operators can choose to compete in shorter, targeted ‘call off’ competitions either for new builds or existing privately managed prisons as their contracts expire. The duration of the framework is six years. The Ministry received six bids from potential providers to get onto the framework, although there were 20 expressions of interest. All six bids were successful and have been accepted onto the framework. Three of the six framework operators (G4S, Sodexo and Serco) are the current private prison contractors and the other three operators all hold or have held large contracts with the Ministry. Of the 20 original expressions of interest, 10 of those came from small or medium-sized enterprises, although none submitted a bid.
167. We expressed concern that some of the successful bidders for the framework had been responsible for poorly performing prisons under other contracts. The Ministry set out the process that framework operators would have to go through to bid for individual prisons. It said that the “process provides the assurance to ensure that any current or previous service delivery issues are fully addressed and lessons learned are reflected and enables us to meet our aim of securing an operator for the prisons we compete who can provide safe, secure, decent and rehabilitative regimes.”
168. We remain concerned at the narrow competitive base of the prisons market and the Ministry’s continued reliance on the same organisations, even when there is evidence of poor performance. *We are disappointed at the lack of participation of small and medium-sized enterprises and recommend that the Ministry sets out in response to this Report further steps it can take to encourage new entrants to market, for example by encouraging joint ventures.*

5 OVERSIGHT OF THE PRISON SYSTEM

169. A key part of the governance of prisons is the oversight regime in place to inspect, investigate and monitor what goes on. There are three main oversight organisations involved in prisons: HM Inspectorate of Prisons (HMIP), Independent Monitoring Boards (IMBs) and the Prison and Probation Ombudsman. Both HMIP and the IMBs are members of the National Preventative Mechanism, which was established in March 2009 after the UK ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2003.
170. The 2016 White Paper envisaged a number of changes to the oversight, not all of which have come to pass:
- strengthen the statutory remit of HMIP to take into account whether prisons are achieving their purpose, as well as consideration as to whether the leadership of a prison is contributing to the achievement of the outcomes it inspects;
 - strengthen the governance arrangements and accountability for IMBs to support them in providing high quality scrutiny; and
 - consideration of the need to put the PPO on a statutory footing to enhance the organisation's independence and credibility.

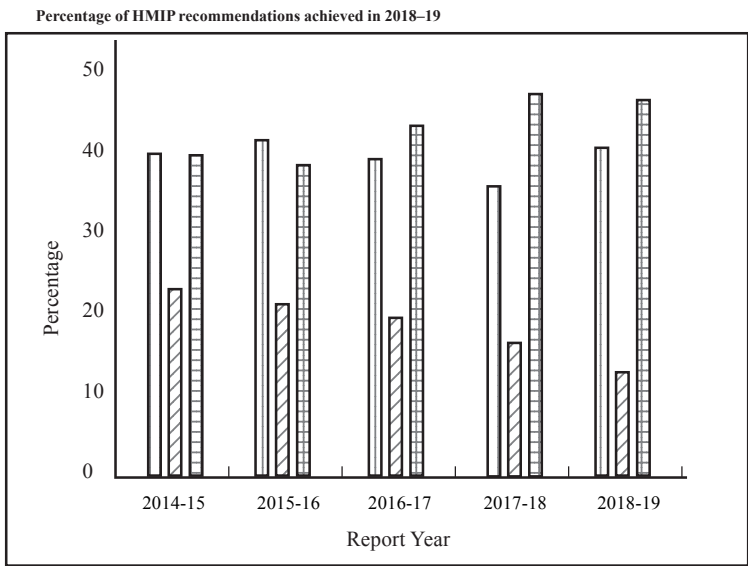
HM Inspectorate of Prisons

171. HM Inspectorate of Prisons (HMIP), led by the Chief Inspector, is an independent inspectorate which reports on conditions for and treatment of those in prison. HMIP undertakes regular inspections of all establishments in the prison estate and makes recommendations to the Ministry and HMPPS to support improvement. However, its recommendations do not have to be accepted and it has no statutory powers to compel changes to be made. The Ministry introduced a new operational process where, in urgent and severe situations the Chief Inspector can alert the Minister directly about poorly performing prisons. The Ministry must respond within 28 days. At the time of writing, this 'Urgent Notification' (UN) process has been triggered six times.

Implementation of HMIP recommendations

172. A number of witnesses raised concerns about the effectiveness of the oversight regime, particularly HMPPS's poor response to HMIP recommendations. Peter Clarke, said that 2018–19 was the third year running that fewer recommendations were achieved than not achieved.

He said that “When you look at the five prisons [now six] that have so far been subjected to the urgent notification process, one of the common factors is an utterly appalling response to recommendations in the past. How that was allowed to happen for so long is still something of a mystery to me, but I hope that in the future transparency and accountability is seen as a strength, not a weakness, on the part of the Prison Service.” He felt there needed to be better support and intervention from senior leadership to demand a better, more positive response from local establishments and agreed that responsibility for that sat with HMPPS and the Ministry.



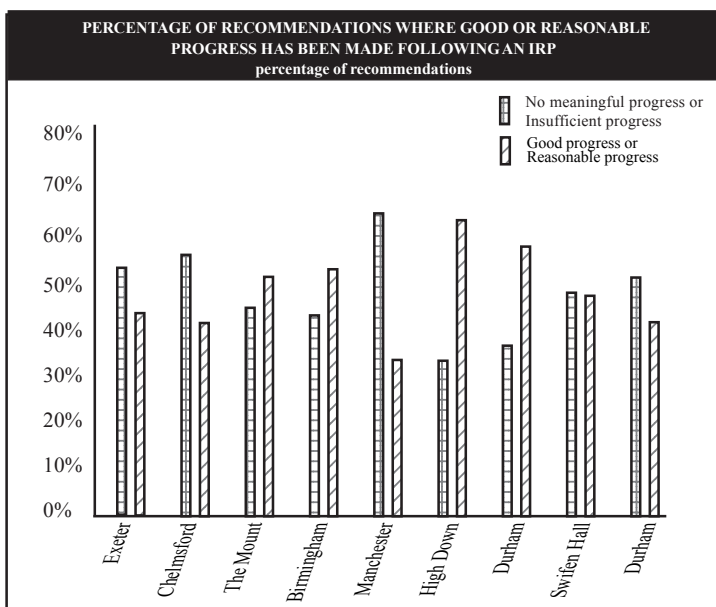
Source: HM Chief Inspector of Prisons for England and Wales, Annual Report 2018–19, HC 2469, July 2019,

173. Jo Farrar, Chief Executive of HMPPS, accepted that there was a need for clarity about what governors and prison group directors are responsible for and where accountability lies and said that HMPPS was putting in place processes to actively monitor inspection outcomes and recommendations. There is already a unit in HMPPS dedicated to supporting the implementation of HMIP recommendations. Phil Copple, Director General of Prisons, emphasised that the failure to achieve recommendations was not because prisons were ignoring

them or not working to achieve them. He said that “the assessment of recommendations not being achieved is not a reflection of activity and whether there has been an effort. It is actually a reflection of whether the outcomes that are desired are being achieved. The reality... has been that often management teams and their staff are working hard to get better outcomes, but they have not always been successful in recent years because of the scale of challenge.” Prison governors also emphasised the challenges of trying to address high volumes of recommendations when they might have the capacity to make only a few changed at any one time.

174. We previously expressed concern about the slow progress made by the Prison Service in implementing HMIP recommendations when we looked at HMIP’s critical report on HMP Liverpool in 2018.

Results of HMIP Independent Reviews of Progress to date



Source: Analysis of HMIP Independent Reviews of Progress

This figure shows the progress made in implementing recommendations to date

Partly in response to our recommendation that HMIP should be given additional resources to follow-up on recommendations, the Government agreed that HMIP should be able to undertake Independent Reviews of Progress (IRPs). IRPs differ from inspections and instead follow up on a selection of key concerns and recommendations from inspection reports and make judgements about the extent of progress made. HMIP has funding for about 15–20 per year. The Chief Inspector was broadly positive about the introduction of IRPs, describing them as “new levers” he could use. He said that “early indications are that they [IRPs] are being taken seriously” and that they seem “to have brought forward a far more focused response than perhaps we have been used to in the past.”

Inspector or regulator?

175. We discussed with our witnesses the merits of being an inspector over a regulator. The Centre for Social Justice, in their report *Control, Order, Hope: A manifesto for prison safety and reform*, recommended that “the Government should pass legislation to convert HM Inspectorate of Prisons into a legal regulator with statutory powers to inspect and require enforceable improvement in prison establishments.” The Care Quality Commission, which has oversight of healthcare provision in prisons does have enforcement powers. Both Peter Clarke and Dame Anne Owers, the National Chair of the IMBs agreed that it was important to safeguard the independence of HMIP as an inspectorate. Peter Clarke said that:

“The independence of the inspectorate in the standards we set and the origin of those standards in international human rights instruments is very important. We are not looking for compliance with policy. I think that is absolutely vital. We should not become part of the management regime, which being a regulator could imply, or to some extent potentially lead to. There should be two legs. One is independent inspection and the other should be effective line management. It should be unequivocally the role of line management to look at what independent inspection is saying and insist upon it being implemented.”

176. We agree with the Chief Inspector of Prisons that it is vital that the Inspectorate retains its independence and the ability to set its own standards. However, we remain deeply concerned at the lack of progress in implementing recommendations. It is not acceptable that for three years running less than half of recommendations made by

the Inspectorate have been fully achieved. It is fundamentally the responsibility of the Ministry and HMPPS to implement what is being recommended and they need to take ownership of this. We also understand that many governors, already working in challenging environments, may be overawed by the level of change required and we think they require additional support to make changes that get to the heart of what the Inspectorate is recommending. We welcome the introduction of Independent Reviews of Progress and take a close interest in the results of these. *We recommend that the Ministry sets out who is accountable for implementing HMIP recommendations, the steps it is taking to drive improvement and additional support it will provide to governors to do this. Urgent action is needed, and we call on the Ministry to make a commitment that at least 50% of all recommendations will have been fully achieved by the end of 2020–21, as assessed by the Inspectorate.*

Independent Monitoring Boards

177. The Prison Act 1952 requires every prison to be monitored by an independent Board appointed by the Secretary of State from members of the community in which the prison is situated. Each Board is a separate statutory body. To enable the Board to carry out these duties effectively, its members have right of access to every prisoner and every part of the prison and also to the prison's records. There are currently more than 1300 IMB members who carry out over 50,000 visits to prisons every year and deal with around 30,000 individual applications from prisoners. However, the number of members has been falling over the past 5 years: in April 2018 there were 1,394 compared to 1,678 in April 2019. As at May 2018, there were 691 IMB vacancies.
178. Although there have been recent changes to the governance structure of the IMBs, including the appointment of Dame Anne Owers as National Chair, the new structure has no statutory basis. The IMBs point out that therefore it is not possible for the IMBs as a whole to have a corporate existence as an independent arms' length body, capable of employing staff and with direct responsibility for its own budget. Nor is there a formal report to Parliament. Dame Anne told us having each individual IMB as a separate statutory body did not help in terms of developing a new governance structure and that what was required was a statutory national organisation bringing together all the boards.

179. A number of our witnesses questioned the effectiveness of the IMBs. The Prison Reform Trust said that “the excellence of some IMB annual reports throws into relief the struggles others face to rise to the same standard. Some of the country’s most important prisons, especially in remote areas, struggle to maintain a functioning IMB at all.” Dr Philippa Tomczak, Senior Research Fellow at fellow at the University of Nottingham Criminal Justice Research Centre, agreed, noting that ministerial responses to IMB reports are inconsistently published and are neither given due consideration nor responded to effectively. Serco recommended that the role of the IMBs should be redefined under the supervision of the Chief Inspector of Prisons to act as a first line of defence.
180. Dame Anne emphasised a lack of resources as being a significant inhibiting factor to the IMBs carrying out their role effectively, particularly in relation to acting as an early warning system to highlight significant issues to the Ministry. She noted that the IMBs in England and Wales have about half the resource that their sister organisations have in Scotland. The current budget for the IMBs is £1.6 million.
181. The IMBs play a vital role in the oversight of the prison system and we believe they need to be reinvigorated. We echo the National Chair of the IMBs call for a statutory basis for the national governance structure. *We recommend that the Ministry consider legislation to underpin the national governance structure and in particular that there should be a formal national IMB Annual Report laid before Parliament each year. It should also ensure the IMBs are able to perform their role effectively, noting the higher level of resourcing in Scotland.*

The Prisons and Probation Ombudsman and the National Preventative Mechanism

182. The Prison and Probation Ombudsman (PPO) carries out independent investigations into deaths and complaints in custody. The UK National Preventive Mechanism (NPM) was established in March 2009 following the UK’s ratification of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2003. It is made up of 21 statutory bodies that monitor and inspect places of detention, including HMIP and the IMBs. The NPM was brought into

existence via a written ministerial statement to Parliament designating the various bodies that already had the relevant powers to form it, but does not have a clear legislative basis.

183. The NPM itself has called for a proper statutory basis to support its role. More recently, in its conclusions from the periodic review of the UK's efforts to meet the requirements of the UN Convention against Torture, the Committee against Torture stated that the Government should "should clearly set out in legislation the mandate and powers of the secretariat and members of the National Preventive Mechanism and guarantee their operational independence."
184. The 2016 White Paper consider putting the PPO on a statutory footing and the PPO, Sue McAllister, told us that this remains an essential goal for her. We have previously called for both the PPO and the NPM to be put on a statutory footing. The Ministry said that it would consider putting the PPO on a statutory footing if Parliamentary time became available. It said it would continue to explore with the NPM and other stakeholders whether there are additional practical benefits of the NPM having a statutory basis.
185. We repeat our call that both the Prison and Probation Ombudsman and the National Preventative Mechanism should be put on a proper statutory footing. *We recommend that the Ministry update us on what progress has been made in its exploration of legislative options for both organisations.*

CONCLUSIONS AND RECOMMENDATIONS

An Enduring Crisis in our prisons and the need for leadership

1. We warmly welcome the link the Secretary of State has made between safety and purposeful activity. There must be greater investment in purposeful activity to reduce the estimated £18 billion cost of reoffending and improve safety in prisons. We repeat the call made in our report Prison Population 2022 for a dual focus on safety and rehabilitative activity and we look forward to further announcements from the Secretary of State setting out how he will improve purposeful activity in prisons. (Paragraph 17)

2. We welcome the previous Secretary of State's commitment to producing a long-term and multi-year plan and recommend that the current Secretary of State honour it. The plan should set out clearly an overarching and integrated strategy to deal with the main challenges facing the prison system. Prisons policy has too long been made on an ad-hoc basis, with new policies announced via press notice and little explanation given as to how they fit into the overall strategic direction of the Prison Service. A clear, evidenced-based strategy is necessary to give governors the stability and confidence to make the changes necessary to improve prisons. This strategy should be produced by 31 March 2020. (Paragraph 30)
3. In relation to the Government's proposed changes to sentencing, we are concerned that the announcement may over time result in a significantly increased prison population without any guarantees that the necessary infrastructure will be put in place to avoid further overcrowding of prisons. We recommend that the Ministry publishes the results of its sentencing review in full, including its evaluation of the proposed sentencing changes in the Sentencing Bill on the size of the prison population. (Paragraph 32)
4. We welcome the additional and sorely needed investment the Government has announced for the prison system. Given the Governments' poor track record in delivering promised new prison places, we recommend that the Ministry sets out further details of how and when it intends to use the £2.5 billion that has been committed to build 10,000 additional places and over what time period they will be built. (Paragraph 34)
5. We are particularly concerned by the focus on creating additional places, rather than on replacing dilapidated and decrepit prisons in the current estate. The Ministry estimates it has a current backlog of maintenance work worth £900 million and attention must be given to the rest of the prison estate, which is falling into an ever-worse state of disrepair. We took comfort from the words of the Secretary of State for Justice and the Chief Executive of the HMPPS, who each acknowledged the significant challenge of managing the prison estate. However, we have still not seen the long-term estate strategy we were told was being developed by the Ministry of Justice. We recommend that the Ministry sets out the immediate steps it is taking to manage

and reduce the backlog of maintenance and sets out a timetable to achieve this. We renew our call for a long-term estate strategy and request that the Ministry publishes this in response to this report. (Paragraph 35)

6. We welcome much needed additional funding for the Ministry of Justice and in particular for the prison system. We acknowledge that the recent Spending Review was intended to cover only one financial year but believe the condition of the prison system is such that a multi-year funding settlement is urgently required. Prisons should be safe and decent environments that rehabilitate offenders but this not currently the case. We have called for a long-term plan to improve the prison system, but this will work only if it has the funding to underpin the plan. We note the recent schools funding announcement for the three years to 2022–23 and would welcome something similar for prisons. We recommend that the Ministry works with HM Treasury to agree long-term funding plans, to give the Prison Service and prison governors the confidence and stability to drive real change in prisons. (Paragraph 43)
7. The cross-system approach the Government has taken to the criminal justice sector in its recent policy announcements is welcome. However, we would like to see more detail on how the Government will take the same approach in relation to reoffending, as the Secretary of State set out when giving evidence to us. (Paragraph 45)

The role of the governor

8. We support the principle of governor empowerment and it seems sensible and logical that governors should have autonomy to run their prisons as they see best. Any devolution of responsibility to governors must be accompanied by the training and support necessary for governors to succeed in their role. In the three years since the 2016 White Paper and the setting up of the original six reform prisons, the governor empowerment agenda has been implemented on an ad hoc basis, and we are concerned by a lack of clarity as to how the role of the governor has changed as a result. Neither have we seen any evaluation of the impact the changes have had on prison performance. We recommend that the Ministry publishes a full impact evaluation of the changes it has made to governor responsibilities since 2016. (Paragraph 52)

9. Governors will be able to make use of their autonomy and be truly innovative only if they have the necessary funding and the ability to use it how they see fit. We were concerned to hear that governor's control over their prison's finances remains limited. We call on the Ministry to set out in response to this report what discretionary funding is available for governors to undertake individual projects in their prisons, as well as what more can be done to give governors the financial independence to drive truly innovative change. (Paragraph 53)
10. We are concerned that the additional responsibilities that governors have received under the empowerment agenda do not match the rhetoric used by the Ministry and that therefore there is a lack of clarity both as to what governors themselves are responsible for, but more generally who is accountable for the performance of individual prisons. We recommend that the Ministry undertake a review of the accountability structures within which governors operate to ensure absolute clarity as to who is responsible for what. (Paragraph 57)
11. Many different organisations work in a prison and we agree with our witnesses that partnership working is an important part of a well performing prison. A whole-prison approach is absolutely vital and it should be for the governor to work with partner organisations to set the vision and strategic direction for their prison. (Paragraph 59)
12. We welcome the Secretary of State's commitment to introducing greater autonomy for governors to undertake minor repairs and we support him in his endeavour of setting up works departments in prisons to do this. We believe this is a sensible initiative that will have a positive impact on the condition of prisons, as well as creating purposeful activity for prisoners, and call for this to be implemented as soon as possible. We recommend that in response to this Report the Ministry sets out more detail about how it will implement this initiative and when it expects to roll it out across the prison estate. (Paragraph 67)
13. We continue to be very concerned about the performance of facilities management contracts. The condition of the prison estate is dire and the current contracts bureaucratic with limited opportunities for governors to exert any influence in individual prisons. We recommend that the Ministry, at the earliest possible opportunity, move away from national contracts for facilities management to much smaller, localised

arrangements. The example of the contracts used under the Prison Education Framework may prove useful in this, but the overarching principle must be that governors have more control over the service and can adapt it to meet the needs of their prison. (Paragraph 68)

14. The current system for approving capital expenditure is bureaucratic and we welcome the Secretary of State's commitment to look seriously at this issue. Governors should have more discretion to authorise capital expenditure themselves. We accept the need to approve some major capital work centrally, but call for greater responsibility for governors. We recommend that the Ministry review governor's responsibilities for approving capital expenditure and consider how further financial authority can be devolved to them. (Paragraph 71)
15. We are concerned by what we have heard about the bureaucracy of procurement in the prison system, particularly the length of time it can take to get equipment into individual prisons. We welcome the Government's recent announcement of £100 million investment in prison security, but this will only be effective if the equipment it purchases, such as drugs scanners, arrives in prisons in a timely fashion. We call on the Ministry to commission an independent review of procurement processes to ensure that prisons get the equipment they need in a timely fashion. (Paragraph 74)
16. Governors must have the necessary support and training. We welcome the initiatives being undertaken by HMPPS, such as the senior leaders scheme, but agree that there needs to be greater investment in leadership development. The ability of governors to go on short secondments outside the Prison Service to learn about leadership in other organisations is a vital tool and we would like to see this available more widely. The work undertaken on leadership development as part of the 10 prisons project is positive, but we note no evaluation of this aspect of the project has been published. We recommend that the Ministry sets out how it intends to take forward the leadership development work undertaken as part of the 10 prisons project, including how this will be rolled out across the rest of the estate. (Paragraph 78)
17. The role of the governor is ever more complex and is rapidly moving from having a mainly operational focus to requiring a more strategic approach. Governors need access to sufficient support and expertise to enable them to fulfil this role. (Paragraph 79)

18. We believe that prisons require stability to make improvements and this starts with stable leadership. Turnover of governors is too high, and they do not have enough time to embed long-term change before leaving or moving elsewhere within the Prison Service. In order to reduce turnover and stability we recommend HMPPS should work on the principle that where possible governors remain at one prison for at least five years before being moved to other parts of the Service. (Paragraph 83)
19. Both governors and prison officers must have sufficient incentives to stay in the Prison Service and this is an important part of reducing turnover. We recommend that the Ministry and HMPPS review incentive structures to see what more can be done to incentivise individuals to stay in the Service. (Paragraph 85)
20. We welcome the overall increase in the number of prison officers, but are concerned by the high rate of attrition among officers and the effect this has on the experience in the Service. If HMPPS is unable to retain officers in the long term this will reduce the pipeline of talent for future governors. We note the work currently being undertaken by the Ministry but recommend that a formal strategy is required to improve retention of prison officers. (Paragraph 89)
21. We welcome the Ministry's commitment to improving BAME representation in the Prison Service but, two years on from the Lammy Review, progress has been disappointingly slow. This must continue to be a priority for the Ministry, which has committed to publishing an update on its implementation of the recommendations in the Lammy Review by the end of 2019. We look forward to seeing this and recommend that the Ministry publishes diversity data by grade, as well as a more detailed analysis of the barriers to progression of BAME staff within HMPPS and an evaluation of the changes the Ministry has implemented since the publication of the Lammy Review to remove such barriers. (Paragraph 92)

Commissioning services in prisons

22. It is clear that governors are not in reality "co-commissioners" of healthcare. For governors to play an effective and influential role in the provision of healthcare, they must work effectively in partnership with healthcare colleagues. There is a risk of inconsistency in the quality of provision across the estate, depending on the quality of

those partnerships. We recommend that the Ministry work with NHS England to ensure that effective guidance and training is in place to support governors develop high-quality partnerships with healthcare providers and commissioners. (Paragraph 99)

23. In response to this Report, the Ministry and NHS England should set out the steps they are taking to improve information sharing between Prison Service staff, healthcare providers and health commissioners. (Paragraph 100)
24. We agree that governors and prison officers play a vital in facilitating healthcare. We recommend that HMPPS reviews the training available to ensure that prison staff fully understand what their role is in relation to healthcare and how they can support its provision. (Paragraph 101)
25. We are concerned about the impact that missed appointments might be having on prisoner health, but we are unclear of the impact because HMPPS does not publish performance data on missed appointments. This is something that was originally envisaged in the 2016 White Paper and we recommend that such a measure is included in the Prison Performance Tool. It should also set out the steps it is taking to reduce the number of missed appointments. (Paragraph 102)
26. Now that the Spending Review has been announced, the Ministry should set out what funding will be available to support the drug recovery pilot, as well as the sharing of good practice at other establishments. (Paragraph 104)
27. We are concerned to hear that the Inspectorate is continuing to find prisons without any proper drug strategy, which was a clear commitment in the Ministry's own overarching strategy. The Ministry should set out the steps it is taking to ensure all prisons have a drugs strategy in place, as well as how it measures the quality and effectiveness of individual strategies. (Paragraph 105)
28. We welcome the Government's announcement that funding will be available to install x-ray scanners across the prison estate. Given the Secretary of State's comments that such scanners will be more effective in some parts of the estate than others, we would welcome further information about how many and which types of prisons will have scanners installed in them, as well as when the Ministry expects these to be installed by. (Paragraph 106)

29. We are concerned to hear that the new arrangements for education provision have been launched without clarity about what governors are responsible for, nor clear measures to hold governors and service providers to account. The Ministry should set out the performance measures that will be used to hold service providers and governors to account. We also seek further detail about how prisoner progression is going to be measured. (Paragraph 112)
30. We welcome the changes to education provision and believe they represent an opportunity to deliver positive change to support the rehabilitation of prisoners. However, we are concerned to hear that some governors do not feel they have the skills or support to manage the new education contracts and this represents a real risk to the long-term success of the new arrangements. We recommend that the Ministry urgently review the training and support available to governors and their teams and the extent to which this training has been received. (Paragraph 114)
31. There is clear evidence to suggest that small providers need longer-term contracts to offer them security. The Ministry should review the arrangements for awarding contracts under the DPS to enable contracts of longer than one year to be offered. (Paragraph 116)
32. The DPS was intended by the Ministry to give prisons access to suppliers that are able to meet the bespoke educational needs of their establishment and offers a flexible route to services that add real value. However, we are concerned that the roll-out of the system has had the opposite effect, acting as a disincentive to governors to tender for services and to service providers to apply for them. The Ministry should urgently review how it can make the DPS more accessible and less time consuming for service providers and prison staff. We note that a similar system is being considered for the probation system; the Ministry should ensure it undertakes a full evaluation of the roll out of the DPS before it introduces a similar initiative as part of its probation reforms. (Paragraph 119)
33. Education in prisons is an important part of the regime and the Ministry needs to ensure that it retains a focus on this, and other purposeful activity, as well as safety and decency in prisons. We recommend the Ministry reviews the training available to prison officers and governors to ensure they are best able to support prisoner's access to education. (Paragraph 122)

The role of HMPPS and the Ministry of Justice

34. Accountability starts at the top of any governance structure and there needs to be absolute clarity as to the respective responsibilities of the Ministry, and by extension the Minister, and HMPPS. The Prison Service needs a period of stability to deal with the many challenges it faces and constantly changing who is responsible for what, with ever more complicated arrangements, is not helpful in this endeavour. We recommend that the Ministry clarifies the split in responsibilities between itself and HMPPS, particularly in relation to functions delivered by policy teams. (Paragraph 132)
35. We welcome the broadly positive results of the 10 prisons project. However, there were many aspects to the project, such as additional investment in leadership. The limited evaluation that was published provided no quantitative or qualitative analysis of the specific initiatives undertaken. The point of the project was to identify what works in terms of improving safety and decency in prisons, but it remains unclear exactly which parts of the project will now be rolled out across the rest of the estate and what funding is available to do this. Now that the results of the 10 prisons project have been published, we recommend that the Ministry publishes further analysis of the relative success of the various initiatives undertaken, as well as providing details as to what is now being rolled out to other prisons in the estate and what funding will be available to do this. (Paragraph 135)
36. It is vital that HMPPS has an oversight structure in place that enables it to identify where problems exist and support governors. We welcome the introduction of the Prison Group Structure. However, any oversight structure must be proportionate and focused on outcomes. We recommend HMPPS commissions a review to look at how its oversight structures can be streamlined to reduce the burden on governors and their teams, for example by condensing the number of requests for assurance. (Paragraph 139)
37. We recognise the need for any performance management framework or data collection to be proportionate, but we remain concerned about the lack of data available beyond prison safety and security. We welcome the Ministry's commitment to introduce measures for time out of cell and purposeful activity in 2020–21. However, three years on from the White Paper, we call for a wider discussion about how

prison performance is monitored and what data is collected. We note that the Chief Executive has started to review what the right performance measures are and how prisons should be held to account. We recommend that this review engages with the widest possible group of stakeholders and considers what technological solutions are available to make data collection as accurate and resource-efficient as possible. (Paragraph 143)

38. HMPPS collects detailed data on safety in prisons and other aspects of prison life. As a result, many of the measures in the Prison Performance Framework are safety related. However, well performing prisons are not just those that are safe, but also offer a decent environment and rehabilitate the prisoners in their care. We welcome the steps being taken to improve data collection on health and education, but HMPPS needs to work with its partners to produce a suite of prison performance measures that cover all parts of the prison regime to give an overview of the performance of individual prisons as a whole. We recommend that HMPPS works with its partners, including NHS England, to produce a performance framework that covers all aspects of prison life, including health and education. This should be reflected in the annual prison performance ratings. (Paragraph 147)
39. We welcome the review of special measures being undertaken by the Ministry. There is little point in identifying prisons as requiring additional support, if the resulting action does not result in improved performance. There must be sufficient resource available to support prisons that are struggling effectively. We recommend that the Ministry publishes the results of the review undertaken by HMPPS and sets out the steps it will take to improve the support available to poorly performing prisons. (Paragraph 151)
40. The sharing of good practice is an important function of any governance structure and we agree with the Secretary of State that this is something that needs to improve. We often hear about some of the great work that goes on in individual prisons and would like to see this captured more effectively by HMPPS, so that it can be shared with the rest of the estate where appropriate. We recommend that HMPPS develops a formal strategy for the sharing of good practice across the Prison Service and provides an update on the steps being taken to facilitate this. (Paragraph 154)

41. It is unacceptable that healthcare in some private prisons is commissioned to a different specification than the rest of the estate and we are concerned that prisoners in some prisons may receive worse standards of healthcare as a result of this situation. It is important that contracts are flexible enough to adapt to changing circumstances and this issue should have been dealt with long ago. We recommend that the Ministry sets out a timetable for rectifying this problem. It should also provide information about how HMPPS ensures that there is equivalence between the commissioning specifications it uses and those of NHS England. (Paragraph 161)
42. We welcome the work being undertaken by the Ministry to review the contract delivery indicators (CDIs) to be used for future contracts. However, the fact that many of the current contracts use varying and often out of date CDIs, seems to us an oddity that risks creating an unfair playing field where perverse incentives exist. We recommend that the Ministry considers how it can ensure that future contracts have the flexibility to take into account changes in performance measurement standards as appropriate. (Paragraph 165)
43. We remain concerned at the narrow competitive base of the prisons market and the Ministry's continued reliance on the same organisations, even when there is evidence of poor performance. We are disappointed at the lack of participation of small and medium-sized enterprises and recommend that the Ministry sets out in response to this Report further steps it can take to encourage new entrants to market, for example by encouraging joint ventures. (Paragraph 168)

Oversight of the prison system

44. We agree with the Chief Inspector of Prisons that it is vital that the Inspectorate retains its independence and the ability to set its own standards. However, we remain deeply concerned at the lack of progress in implementing recommendations. It is not acceptable that for three years running less than half of recommendations made by the Inspectorate have been fully achieved. It is fundamentally the responsibility of the Ministry and HMPPS to implement what is being recommended and they need to take ownership of this. We also understand that many governors, already working in challenging environments, may be overawed by the level of change required and we think they require additional support to make changes that get to

the heart of what the Inspectorate is recommending. We welcome the introduction of Independent Reviews of Progress and take a close interest in the results of these. We recommend that the Ministry sets out who is accountable for implementing HMIP recommendations, the steps it is taking to drive improvement and additional support it will provide to governors to do this. Urgent action is needed, and we call on the Ministry to make a commitment that at least 50% of all recommendations will have been fully achieved by the end of 2020–21, as assessed by the Inspectorate. (Paragraph 176)

45. The IMBs play a vital role in the oversight of the prison system and we believe they need to be reinvigorated. We echo the National Chair of the IMBs call for a statutory basis for the national governance structure. We recommend that the Ministry consider legislation to underpin the national governance structure and in particular that there should be a formal national IMB Annual Report laid before Parliament each year. It should also ensure the IMBs are able to perform their role effectively, noting the higher level of resourcing in Scotland. (Paragraph 181)
46. We repeat our call that both the Prison and Probation Ombudsman and the National Preventative Mechanism should be put on a proper statutory footing. We recommend that the Ministry update us on what progress has been made in its exploration of legislative options for both organisations. (Paragraph 185)