

scottish justice matters

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CHANGING TIMES

Special features on the reforms facing Scotland's criminal justice system

Also

Problem-Solving Courts

Interview with
HM Chief Inspector of
Prisons, Hugh Monro



REFORM
IN SCOTTISH CRIMINAL JUSTICE

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Eyes and Ears of the Community

A short history of the reform of Prison Visiting Committees in Scotland



Mary Munro cautions that the important distinction between the need for continuous lay monitoring of our prisons on the one hand and prison inspection on the other, is at risk in current proposals.

IN 1878 the management of prisons in Scotland was reformed by the transfer of responsibility for prisons from local authorities to the State. A local connection with prison and prisoners was preserved by the appointment of Visiting Committees (largely magistrates and then all male) to:

“... from time to time and at frequent intervals visit the prison for which they are appointed, and hear any complaints which may be made to them by the prisoners, and if asked privately. They shall report on any abuses within the prison, and also on any repairs which may be urgently required in the prison, and shall further take cognizance of any matters of pressing necessity, and do such acts and perform such duties in relation to a prison as they may be required to do or perform by the Secretary of State.” (Prisons (Scotland) Act 1877 s. 15)

These arrangements continued for the next 130 years without any major change of purpose or scrutiny, attracting little attention by and large. Dr James Devon, medical officer of Glasgow Prison, wrote in 1912 that its Committee had “considerable powers of criticism, but they are not much used ... there are no complaints and at the end of a visit they know as much about the inmates as they might learn of natural history by a walk round the Zoo (Devon, 1912)”

Fast forward to 2005, to the new devolved Scottish Parliament with legislative powers and, crucially, time to debate justice affairs, and a Labour-Liberal coalition committed to an ambitious programme of reform. A Review Group was commissioned to look at the role and functions of the Visiting Committees (VCs) and duly reported in 2007. Its 39

recommendations were both a comprehensive critique of the laissez-faire governance of Committees and a positive re-statement of their distinct purpose in a modern justice system. In particular, the review emphasised that, despite the work of the Prisons Inspectorate and the Prisons Complaints Commissioner (the latter of which has since been abolished), there was a distinctive and complementary role for the VCs as having roots in local communities and therefore capable of sustaining a regular relationship with a particular prison while being independent of the prison service (Review Group, 2007 1:4).

The incoming minority Scottish National Party (SNP) administration of May 2007 inherited and carried forward substantial aspects of the justice reform agenda from the coalition, but at that stage took no action on the question of VCs. Then, in 2008, in the context of work on improving public service complaints systems overall, Finance Secretary John Swinney announced that the Scottish Government was exploring the possibility of linking their role with that of the Prisons Inspectorate.

In the meantime important changes had taken place in relation to the commitment of the UK jurisdictions to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (2002) and its Optional Protocol (OPCAT). The UK’s national prevention mechanism (NPM), established in 2009 to deliver compliance following ratification, covered the Prisons Inspectorates for the UK jurisdictions and the Independent Prison Monitoring Boards of England and

Wales, and Northern Ireland. Scotland's VCs were not included because, although nominally independent, they fell short of the Protocol standard in that budgets and administration were managed by the Scottish Prison Service, and the VCs were, in any case, under review.

Curiously then, when in early 2011 the Justice Secretary launched a consultation on the independent monitoring of prisons, the 'key driver' was not the importance of monitoring per se, but the need to "simplify the landscape of public sector organisations in Scotland" (Scottish Government, 2011). However, with the exception of the submission from the Scottish Prison Service (SPS), nearly all respondents to the consultation resisted the idea of integrating the functions of VCs with that of the Prisons Inspectorate and supported their re-establishment as Independent Monitoring Boards, as recommended by the 2005 report, rather than outright abolition. The need for reform was not essentially in dispute. In December 2011, despite the findings of the consultation, the Justice Secretary wrote to VCs announcing their disbandment in early 2012 and replacement with a more costly prisoner advocacy service.

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If the VCs may be accused of complacency and a failure to grasp the need to engage energetically with the question of reform before this announcement, it was clearly not the case thereafter. Support was mobilised, and protests resulted in a Parliamentary debate in February 2012 in which all parties, other than the SNP, were unanimous in arguing for the principle of independent monitoring and critical of the replacement proposals. There seemed to be a clear view that as in the words of Alec Spencer, convenor of the Scottish Consortium on Crime and Criminal Justice (SCCCJ), in a note to the Justice Secretary that "prisons, because of their closed nature, always retain the potential for mistreatment and abuse of those within their charge. The role of Visiting Committees is to monitor what goes on in prison (and to hold the Governor and staff to account), to be available to prisoners to hear complaints and to report to Ministers any matters of concern. That role is still relevant and necessary today" (Spencer, 2013).

A further parallel development was that in the Police and Fire Reform (Scotland) Act 2012, provision was made for independent custody visitors, in compliance with OPCAT, to visit people detained by the police. Nonetheless, the uncertainty over the future of the prison VCs continued.

The Scottish Government then commissioned Professor Andrew Coyle to review the proposals to improve arrangements for independent monitoring with a brief to

consider conformity with OPCAT, responses to the new (advocacy) proposals, and the independent monitoring of legalised police cells. His report, published in January this year, confirmed the view that present arrangements were untenable and that VCs should cease in their present form, to be replaced by "voluntary independent prison monitors to be appointed through a transparent process for specified periods and with a clearly defined role" (Coyle, 2013). Dependence on the SPS for training and resources would cease and there should be a national Council of Independent Prison Monitors.

Again the distinction between inspection and monitoring was made clear. The Prisons Inspectorate conducts periodic planned reviews of each prison. This is very different from the regular, frequent, unannounced and sustained monitoring of a particular establishment by local people: but the two should be complementary, and indeed, need to be so in order to comply with the 'layered monitoring' mechanism of OPCAT.

The question then arises as to what arrangements should be made for the oversight and support of these volunteers? One possibility would have been to locate them with the Scottish Human Rights Commission, already part of the OPCAT national preventative mechanism, in order to underline the independence of the reformed arrangements. However, the Justice Secretary has decided to integrate a new structure of four regional employed but part-time monitors supported by local volunteer monitors with the Prisons Inspectorate (Scottish Government, 2013). This would not necessarily result in any threat to independence: rather the risk is rather that the distinct functions of the volunteer local monitors might become subservient or subordinate to the work of the professional Inspectorate.

The Scottish Government intends to complete the process of reform by autumn 2014, although there will be an opportunity to comment on the draft legislative order at the end of June 2013 before it is introduced to Parliament in September. What is clear is that it will be crucial, not only to invest in the distinct tasks of inspection and monitoring, but to think creatively overall about the way local communities connect with the prison system.

Coyle, A (2013) *Review of Proposals to improve the arrangements for independent monitoring of prisons*. Scottish Government. <http://bit.ly/17S7VU1>

Devon, J (1912) *The Criminal and the Community*. Bodley Head. p.216.

Review Group (2007) *Report on the Review of Prison Visiting Committees*. Scottish Government. <http://bit.ly/17RSV8J>

Scottish Government (2011) *Consultation on Independent Monitoring of Prisons – Analysis Report* <http://bit.ly/10tHWSu>

Scottish Government (2013) *The Scottish Government response to the review of proposals to improve arrangements for the Independent Monitoring of Prisons* www.scotland.gov.uk/Resource/0042/00420798.pdf

Letter from Prof Alec Spencer to Justice Secretary Kenny MacAskill 1.2.12 www.scccj.org.uk/wp-content/uploads/2012/02/120201_SCCCJLet_VCs_Kenny-MacAskill.doc

Mary Munro is an editor of Scottish Justice Matters

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