

**OFFICE OF THE
INSPECTOR OF PRISONS
ANNUAL REPORT
2013/2014**

Office of the Inspector of Prisons
24 Cecil Walk
Kenyon Street
Nenagh
Co. Tipperary

Tel: +353 67 42210

Fax: + 353 67 42219

E-mail: info@inspectorofprisons.gov.ie

Web: www.inspectorofprisons.gov.ie

Office of the Inspector of Prisons Annual Report 2013/2014

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Prisons Act 2007

Judge Michael Reilly
Inspector of Prisons

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Chapter 1

Introduction

- 1.1 In this Annual Report I give brief details of my activities for the period 1st January 2013 to the date of this Report.
- 1.2 I am satisfied that the vision of the Director General of the Irish Prison Service and his management team augers well for the future of prisons in this Country. In saying this not alone do I refer to the building programme which will eliminate slopping out except for a minority of prisoners in Portlaoise Prison, to the reduction in the prison population but also to the new and innovative structures that have been put in place for the benefit of both staff and prisoners.
- 1.3 The Irish Prison System is fast approaching to the point where the majority of prisoners who wish to have single cells will be able to avail of same, where prisoners who wish to avail of educational opportunities will be able to and where those who wish to avail of structured, relevant work training courses can do so.
- 1.4 The Minister for Justice and Equality and the Irish Prison Service must be congratulated for having the foresight and the tenacity, even in severe economic times, to persevere with this vision.
- 1.5 There are, however, challenges ahead. **ALL** members of the Irish Prison Service from Governors to Recruit Officers must buy into the changing system as must all those who provide services to prisoners and to prisons.
- 1.6 The Irish Prison Service has had to and must further adapt to the changing economic situation.
- 1.7 Many of the changes that have come about have meant that the prisons have become more open to outside eyes. I welcome this initiative.

- 1.8 I also welcome the involvement of many outside agencies who give voluntarily of their time to bring sporting, cultural and vocational training to the prisons which can only benefit the prisoners. It is appreciated by the prisoners.
- 1.9 In Chapter 2, I give details of Reports that I submitted to the Minister during the period covered by this Report. I do not intend elaborating on these reports as they speak for themselves.
- 1.10 In Chapter 3, I give details of my contacts with the Irish Prison Service and the Department of Justice and Equality in relation to various advices that I gave. I also give details of protocols and standard operating procedures that the Irish Prison Service has promulgated.
- 1.11 In Chapter 4, I give details of my procedures for the investigation of deaths of prisoners and for the investigation of prisoners' complaints.
- 1.12 In Chapter 5, I give details of my ongoing work and my programme for the coming year.
- 1.13 In Chapter 6, I give details of the issues which still give cause for concern.

Chapter 2

Reports

- 2.1 Since 1st January 2013, I have submitted 40 reports to the Minister as follows:-
- (a) Report of an investigation into the circumstances surrounding the death of Shane Rogers at Cloverhill Courthouse on 20th December 2011.
 - (b) Office of the Inspector of Prisons Annual Report 2012.
 - (c) An Assessment of the Irish Prison System - May 2013.
 - (d) Interim Report on the Dóchas Centre - October 2013.
 - (e) 32 individual reports have been submitted to the Minister in relation to deaths in custody or on temporary release.
 - (f) Omnibus report on Investigations into the deaths of prisoners in custody or on temporary released up to 11th June 2014.
 - (g) A report on an inspection Loughan House Open Centre - July 2014.
 - (h) Investigation into the handling of issues relating to warrants in a criminal matter in the case of Celyn Eadon – July 2014.
 - (i) An overview of Mountjoy Prison Campus with particular emphasis on the Separation Unit – July 2014.
- 2.2 My reports numbered 2.1(a), (b), (c), (d), (g) and (h) have been published by the Minister and are on my website. 24 of my reports in relation to deaths in custody or on temporary release have also been published and can be found on my website www.inspectorofprisons.gov.ie

Chapter 3

Contacts with the Irish Prison Service and the Department of Justice and Equality

3.1 I have briefed the Minister when appropriate on my work programme and on relevant issues. Within the past year I have assisted the Irish Prison Service in bringing forward protocols and standard operating procedures which will now be standard across the prison system. I have given advice on a range of issues. I have also had contact with officials from the Department of Justice and Equality. The main issues relate to the following:-

- (a) Procedures for the use of Safety Observation and Close Supervision Cells.
- (b) Procedures for the operating of the complaints procedure which I deal with in greater detail in Chapter 4.
- (c) Protocol between the Irish Prison Service and my office for my investigation of deaths of prisoners. I also deal with this in greater detail in Chapter 4.
- (d) Advice on the searching of prisoners.
- (e) Necessary changes to Primary and Secondary Legislation.
- (f) Areas and instances where prisoners are without oversight by any external authority.

3.2 In paragraph 3.1(f) I refer to areas and instances where prisoners are without oversight by any external authority. What I have in mind is prison transport and cells in courthouses. The changes to Primary Legislation referred to in paragraph 3.1(e) will, hopefully, address these issues.

Chapter 4

Procedures for the Investigation of deaths of prisoners and prisoners' complaints

Deaths of prisoners

- 4.1 Since 1st January 2012 I now investigate all deaths of prisoners whether they are in actual custody or on temporary release.
- 4.2 I submit an individual report on each death to the Minister and these reports are published.
- 4.3 In my Report dated 11th June 2014 and titled - *“Report by Judge Michael Reilly Inspector of Prisons of his investigations into the deaths of prisoners in custody or on temporary release for the period 1st January 2012 to 11th June 2014”* I set out in detail the reason for my involvement in investigating such matters. I set out my *modus operandi*, my engagement with the families of the deceased prisoners and the form that my reports take.

Prisoner complaints

- 4.4 In my Report dated 10th September 2010 and titled – *“Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline”* I explained that this Country was not meeting its international obligations in the area of prisoner complaints. I also detailed my research into complaints made by prisoners over a one year period and concluded that a new prisoner complaints procedure was called for.
- 4.5 I was asked by the Minister to suggest a model for Ireland that would satisfy our legal obligations. I presented a Report titled – *“Suggested Prisoner Complaints Model for Irish Prisons”* to the Minister on the 26th March 2012 which set out such a model. I explained that any model might have to be adjusted in the light of experience.
- 4.6 The Minister found favour with my suggestion and instructed the Irish Prison Service to bring forward proposals for such a system.

4.7 Complaints are now divided into 6 categories as follows:-

- (a) **Category A Complaints** defined as:-
“assault or use of excessive force against a prisoner or ill treatment, racial abuse, discrimination, intimidation, threats or other conduct against a prisoner of a nature and gravity likely to bring discredit on the Irish Prison Service”.

- (b) **Category B Complaints** defined as:-
“complaints of a serious nature, but not falling within any other category of complaint. Examples of Category B complaints could include verbal abuse of prisoners by staff, inappropriate searches or any other conduct against a prisoner of a nature likely to bring discredit on the Irish Prison Service”.

- (c) **Category C Complaints** defined as:-
“basic service level complaints (and may include complaints about visits, phone calls, reception issues, missing clothes, not getting post on time, not getting appropriate exercise)”.

- (d) **Category D Complaints** defined as:-
“complaints against professionals which, for example, may include medical personnel, legal / financial representatives”.

- (e) **Category E Complaints** defined as:-
“complaints made by visitors to the prison”.

- (f) **Category F Complaints** defined as:-
“complaints against decisions made by IPS headquarters in relation, for example, to such matters as the granting of temporary release, prison transfers”.

- 4.8 The procedures for investigating these categories of complaints have had their teething problems.
- 4.9 I have liaised with the Irish Prison Service and given advice on the complaints system and in particular on identified deficiencies in same. This has resulted in a Protocol and Standard Operating Procedures for the investigation of all complaints.
- 4.10 The new procedures under the Protocol and the Standard Operating Procedures are in operation since 16th June 2014. This Protocol and the Standard Operating Procedures have been published on the Irish Prison Service website. It is a clear, comprehensive and easy to understand document.
- 4.11 I am satisfied that the basis of a robust complaints system has now been laid.
- 4.12 There is an appeals mechanism built into Category B and C Complaints. Unfortunately, there is no mechanism for an appeal process from a decision under Category A Complaints. I have held discussions with the Irish Prison Service and Officials from the Department of Justice and Equality on the issue. The Minister is bringing forward Secondary Legislation to address the problem.
- 4.13 Under Section 12 of the Prison Rules (Amendment) 2013, I have oversight of the complaints system in its entirety.
- 4.14 Now that the procedures have been clarified I will be vigilant to ensure that the complaints procedure is operated as set out in the protocol and will report as appropriate.
- 4.15 All parties must ensure that the complaints system works. Prisoners and staff alike must have confidence in the system. It must be seen to be transparent. It must be robust. If complaints are upheld consequences must follow. Similarly if complaints are found to be vexatious consequences must also

follow. **However, prisoners must be entitled to make complaints without fear of repercussion even where such complaints are not upheld.**

4.16 It is well documented in this and other jurisdictions that prisoners do not always make complaints. This can be for many reasons. The following are those articulated by prisoners:-

- (a) They have no confidence in the system.
- (b) They are 'encouraged' not to make complaints.
- (c) They perceive that they will be at a disadvantage in the prison if they make complaints.
- (d) They fear that they will be transferred.
- (e) In serious cases they fear for their safety.
- (f) They will not be protected if they make a complaint.
- (g) They will not be given temporary release.
- (h) There are many other reasons.

I am satisfied that, certainly in the past, one, some or all of the above reasons were relevant reasons why prisoners failed to complain.

Chapter 5

Work programme

- 5.1 I am investigating the recording and monitoring of telephone calls between prisoners and their solicitors in accordance with the following terms of reference as directed by the Minister:-
- “(a) identify the circumstances which gave rise to the recording of these telephone conversations and the action taken to address this;*
- (b) any action now required to address the issue including any amendments to existing law, regulations and practices; and,*
- (c) consider the data protection implications of the recording of conversations and any action required to ensure compliance with Data Protection legislation and the rights of those in prison”.*
- 5.2 At present I am conducting investigations into Wheatfield, Castlerea and Arbour Hill Prisons. I will submit my reports on the these prisons to the Minister later this year.
- 5.3 I will present a follow up report on the Dóchas Centre to the Minister later this year.
- 5.4 I intend conducting targeted investigations into certain aspects of certain prisons or aspects of the operation of the prison system and reporting on each such individual investigation. An example of this is my recent investigation and report on the Separation Unit of Mountjoy Prison which I presented to the Minister on 23rd July 2014.
- 5.5 I intend conducting a targeted investigation into certain aspects of Cork Prison which cause me concern.
- 5.6 I will continue investigating all deaths of prisoners who die either in prison custody or on temporary release and will report on same.

- 5.7 I will monitor closely the operation of the complaints process.
- 5.8 I will carry out any investigations directed by the Minister under Section 31 of the Prisons Act 2007.
- 5.9 I will carry out any further enquiries should the need arise.
- 5.10 I will prepare and submit an Annual Report in twelve months time.
- 5.11 In connection with my work programme I wish to point out that I now have available to me 12 experts who assist me in my work. They are experts who have been drawn from various fields including those with a background in academia, the law, medicine, investigations, addiction counselling and the caring professions.
- 5.12 My experts, referred to in paragraph 5.11, have been of great assistance during the past year and for that I thank them.

Chapter 6

Matters of concern

- 6.1 There is a culture where a minority of officers abuse the authority vested in them to the detriment of prisoners. This can manifest itself in many ways and is insidious. It can involve such things as bullying, intimidation, name calling, failing to act on requests, making false promises, taking actions to ensure the discomfiture of prisoners and other actions designed to denigrate the prisoners under their control.
- 6.2 Bullying by prisoner on prisoner is a major problem and bullying by staff on staff has been raised as a problem.
- 6.3 When considering my comments in paragraphs 6.1 and 6.2, I wish to make the following general points:-
- (a) Some detainees, in a prison setting, tend to be much more vulnerable and open to abuse than others due to factors such as age, sexual orientation, ethnicity, racial origin, etc.
 - (b) It is the case that some abusing prisoners are much less likely than others to be the subject of a complaint due to factors such as known and feared propensity towards violence, the fact that they may belong to or have the support of an intimidating prisoner 'clique'.
 - (c) Where the abuser happens to be a member of staff the victim may be reluctant to complain because of possible longer-term repercussions.
 - (d) There is an absolute duty on Prison Management to be alert at all times to risks of the kind described and to take the action necessary to eliminate or, at the very minimum, minimise the emergence of such risks. **It is not, in other words, at all satisfactory in the context of**

addressing the issue of prisoner abuse/grievance, to rely on the fact that there is an effective complaints system in place.

- 6.4 While there is a line management structure in the Irish Prison Service in many cases in many prisons this is not effective. I have pointed to this deficiency in many of my reports on the deaths of prisoners in prison. It is the duty of prison officers to do their job. It is the duty of ACO's to supervise such officers. It is the duty of Chief Officers to supervise the ACO's and it is the duty of Governors to ensure that the management structure operates. **There must be consequences when this does not happen and the consequences should not depend on rank.**
- 6.5 There is a lack of appreciation in some quarters that accurate and truthful records must be kept. I must point out, at this juncture, that prison records are official records and it is a very serious matter to falsify official records. An example of this could be a statement to the effect that a prisoner on Special Observation had been checked in accordance with the procedures for the checking of such prisoners when in fact this may not have happened. Inspection bodies such as my office should be entitled to rely on the veracity of official records.
- 6.6 In certain cases the record keeping is poor in that adequate detail is not provided.
- 6.7 When reports of incidents or operational reports are generated it appears that only the minimum is included. In certain cases such reports are incomplete, inaccurate and at times misleading. I have already alluded in a previous report to the statement of a senior member of management of a prison to the effect that – *“If you do not ask the right question you will not get the right answer”*. I have been informed in a number of prisons that the tendency is to put *“as little on paper as is necessary”*. In one investigation that I had sight of, an officer, in referring to report writing, is quoted as stating – *“We are only trained on report writing in initial training and they tell you to ‘keep it short and cover your arse’”*. That investigation also includes the quotation of the

officer's POA representative in the following terms – “*Yes, its true, that's what they tell you*”.

6.8 When considering my comments in paragraphs 6.4 to 6.7, I wish to make the following general points:-

- (a) Senior management must police and check all official journals for accuracy.
- (b) Management must ensure that accurate, comprehensive and truthful operational reports are generated.
- (c) **The senior management of prisons cannot escape their responsibility to ensure that the line management structure in their prisons is adequate and effective.**
- (d) Consequences must follow for prison personnel for foreseeable failures, falsifying documents, providing misleading reports, failing to observe protocols and/or standard operating procedures or failing to vindicate the rights of others be they staff or prisoners irrespective of rank. **In this regard the higher the rank the greater the responsibility.**

6.9 Prisoners on protection pose a challenge for prison management. Prisoners may be on protection for a variety of reasons. Management must not minimise the genuine fear of some prisoners. There are different regimes for dealing with protection prisoners in different prisons. The fact that prisoners are ‘protection prisoners’ cannot be used as an excuse for depriving them of adequate structured activity, appropriate education, appropriate recreation and out of cell time. I will be paying particular attention to this cohort of prisoners in the coming year.

6.10 Overcrowding is a continuing, if a diminishing, issue.

I have already stated in paragraph 5.3 that I intend submitting a further report on the Dóchas Centre to the Minister in the coming months. The overcrowding in the Centre is a matter of serious concern.

There must be no slippage in the timeframe for the building of Cork Prison or the new wing in Limerick Prison.

- 6.11 Considerable time seems to be spent each day by Chief Officers in the larger prisons negotiating the transfer of prisoners between prisons. This seems to involve compromises being made. My comment is that all prisoners are prisoners of the Irish Prison Service and the transfer of prisoners should only take place when an appropriate assessment has taken place and should not depend on the exigencies of the situation in any particular prison.
- 6.12 I have drawn attention in the past to the level of punishment being handed down to prisoners who infringe the Prison Rules as being excessive having regard to International Best Practice.
- 6.13 The prevalence of drugs and other contraband is a matter of grave concern.
- 6.14 I have drawn attention in various previous reports to the healthcare being provided in prisons and have commented critically on the varying levels of such care in different prisons.
- 6.15 At present 17 year old male children are remanded to St. Patrick's Institution. Their numbers range from 1 to 5. The continued accommodation of this cohort of prisoners in St Patrick's Institution is a matter of grave concern.
- 6.16 There are, of course, other issues of concern. These can be summarised as follows:-
- Adequate CCTV.
 - Adequate regimes and services in all prisons.
 - Standardised SOP's across the prison system.
 - Committal Units operating properly in all relevant prisons.
 - Adequate and appropriate medical cover in all prisons.

Comment

- 6.17 **I find it disappointing that, where I have identified deficiencies in one prison, I find the same deficiencies at a later stage in other prisons despite having commented on such deficiency in a published report and in certain instances in a number of reports.**