

Who or what is to blame for deaths in custody?

Toby Harris' inquiry into deaths in custody will focus on the 'vulnerabilities' of those who have died rather than the increasingly harsh conditions inside prisons, argues JM Moore.

'Ladies and Gentlemen

Tougher penalties

More prison places

A stricter prison regime

But also...

Improved resettlement and mentoring of offenders

More education and work inside

A new focus on mental health in prisons'

[\(Chris Grayling's Speech to the 2014 Conservative Party Conference\)](#)

Deaths in prison, particularly of young men, are reaching a crisis point. Something is clearly not right and the Justice Secretary, Chris Grayling, has established [an inquiry](#), led by Toby Harris, to investigate. It is not the first official investigation set up to explain deaths in custody. Like previous inquiries it will have to determine who or what is to blame. Is it the inherent nature of prisons as institutions intended to inflict pain, or the way those institutions are managed or the characteristics of those imprisoned, particularly those who have died?

Most inquiries focus predominately on the characteristics of those who die and seek to identify the particular characteristics of these prisoners which led to them 'not coping'. It is these personal 'inadequacies' that are used to explain away the deaths. Occasionally the official eye also explores the management of the institution and identifies defects in their operation, particularly lost opportunities to [learn lessons from past failures](#). More radical inquiries, such as [Jean Corston's review of women's imprisonment](#), have presented a more

fundamental challenge to the institution of the prison, questioning the suitability of imprisonment for the vast majority of those incarcerated and highlighting the fundamental harms of the prison place.

Harris is currently gathering evidence and his recommendations are eagerly awaited. Whilst we don't know what guidance the Justice Secretary has given to Harris in private it is likely to reflect his public statements. In [Grayling's speech to this year's Conservative Party conference](#) he made the usual ritual attacks on a criminal justice system within which, at least until it became Grayling's responsibility, 'you could mug someone, burgle them, rape them and just get off all but scot free' and in which those imprisoned had access to 'Sky Sports or 18 certificate DVDs'. However, unusually he was forced to insert a dose of penal reality into his speech, admitting that 'too many people self-harm, too many take their own lives'. In explaining the endemic self harm and [escalating number of deaths](#) within prisons he conceded that 'mental health is a key part of the problem' and that 'far too many people with acute mental health problems are found in ... our prisons.' Grayling was careful not to link the increased deaths and self-harm with the amplified harshness of prison regimes which he boasted about in other sections of his speech.

Prisons are institutions of punishment, places designed for the deliberate infliction of pain but under Grayling there has been a [deliberate policy](#) of making them more painful and removing [minor privileges](#) that, at least for some prisoners, made these pains slightly less unbearable. When you deliberately subject people to pain different people respond in different ways and some will find the pain so unbearable that the only way of coping will be to end their lives. Increasing the pain, as Grayling has deliberately done, inevitably means more people will be pushed to the point where they self harm or kill themselves. Some will have histories of mental illness or other vulnerabilities but others will be, as [Phil Scraton and Katherine Chadwick](#) have pointed out 'responding *rationaly* to inhuman policies and practices which are inherent in harsh regimes of detention.'

The extent to which Harris is minded to focus on the individual pathology of the young men who have died recently in English prisons rather than either the inherent harms of imprisonment or the effects of Grayling's intensification of the pains of imprisonment is

demonstrated by [the questions he has asked those responding to his consultation](#). These focus predominately on individual vulnerability. Questions 1 to 7 are about identifying the 'vulnerable' prisoner, whilst questions 19 to 25 focus on the management of vulnerable individuals. The clear presumption here is that vulnerability is exceptional and a failure to identify and manage it can explain deaths in custody. [Vulnerability is not exceptional](#); it is a characteristic of an overwhelming majority of imprisoned young people. The scale of vulnerability means it makes sense to develop policies that routinely treat all young prisoners as vulnerable. Questions 8 to 12 focus on 'information and effective communication'. Such a focus typically allows inquiries to present failure as temporary and a technical malfunction. They avoid hard questions about the nature of state institutions and in the case of prisons, the violence at its heart. They also deflect attention from the abuses which are endemic across the whole penal estate. Questions 13 to 18 again focus on administrative operations – in this case on ACCT (Assessment, Care in Custody and Teamwork) – again showing Harris's underlying assumption that deaths in custody are the result of operational malfunctions that can be corrected by better administration. Such an approach allows the underlying causes – the pains of imprisonment – to be sidestepped. Questions 26 to 31 focus on ways in which procedures following a death in custody can be improved and questions 32 to 37 address prison staff. The focus in the staffing section is exclusively on training, there are no questions on staff violence, staff bullying, or the conflicts inherent in the role of prison guards. The final question addresses the needs of young prisoners' families.

None of the questions focus on what [happens before prison, the journeys the young people take and the missed opportunities for alternatives to custody](#). There are no questions on the overall profile of young people imprisoned or anything on the cultures and functions of the institutions they are punished in. There is certainly nothing about the impact of Grayling's tightening of the penal screw.

For all its claims of independence it appears that Harris has heard Grayling's message and his inquiry will seek to place the official spotlight on the 'vulnerability' of those who have died whilst allowing more fundamental issues such as the [appropriateness of the use of](#)

imprisonment and the harms inherent in imprisonment (and deliberately intensified by Grayling) to remain in the shadows.