

The new prison framework will be inflexible, costly and do nothing to ease chronic overcrowding and violence

*The Conservative manifesto planned to create a series of legally enforceable standards that prisons, and those who work with inmates, will have to meet. **Nasrul Ismail** and **Nick de Viggiani** (University of the West of England) have interviewed 30 prison policymakers about the proposed new framework. They warn its inflexibility will lead to a 'compliance mindset' and make the job of running England's already overcrowded prisons much harder.*

English prisons are in a state of turmoil. On average, there are [74 assaults, 110 self-inflicted injury incidents, and almost one prisoner death in prisons on a daily basis](#). Rates of [physical and mental illness](#) are also high. Overcrowding is one cause; the [prison population](#) has now reached 86,413, 1% below the full usable operational capacity. It is not surprising, then, to learn that England and Wales have the [highest imprisonment rate](#) in western Europe.

David Cameron first announced [wholesale prison reform](#) in February 2016, giving prison governors financial and commissioning freedom. Liz Truss, the former Justice Secretary, maintained this approach, proposing that the secretary of state and prison stakeholders should have legal responsibility for offender reformation, although the dissolution of Parliament in May 2017 [jettisoned](#) this proposal. The [manifesto](#) the Conservative government released in June 2017 reinvigorated Truss's plans by proposing a new legislative framework that seeks to establish sharper external scrutiny of prisons.

We have [interviewed 30 prison policymakers](#) from key organisations across England, including Her Majesty's Prison and Probation Service, NHS England, Community Rehabilitation Companies, and voluntary organisations, to talk about the proposed new legislative framework. Based on these conversations, we believe there are five major reasons it will fail.

Prescribed standards will lead to inflexibility and exacerbate problems

First, the current system, which calls for [self-regulation](#) between HM Prison and Probation Service, NHS England, and Public Health England, should remain. Underpinned by a collaborative framework, these organisations are free to mobilise their resources and expertise according to local needs.

The proposed model would undermine the benefits it confers without addressing the problems in the system. It calls for a set of prescriptive standards that key prison stakeholders will have to meet. Our research participants expressed frustration with unnecessary red tape and disproportionate monitoring: a service development manager of a national voluntary organisation lamented "...[yet] another list of things you've got to have been talked to about ...," and a World Health Organisation project lead for the Health in Prisons Programme cited "... more monitoring ... more returns ... to prove that you're implementing the legislation."

Statutory imperatives have the tendency to become frozen in time. It is not possible to encapsulate the dynamicity of needed prison reform in a single, unchanging piece of legislation. Incarceration policies should uphold values such as justice, morality, and rehabilitation. Forcing these values into rules may make them rigid.

Second, the framework will lead to significant litigation. The proposed legislation would induce a compliance mindset that suppresses effective implementations on the ground. From our interviews, we know that those who work in the prison field are committed to delivering good outcomes for the system and prisoners, such as reducing reoffending and ensuring that prisoners become effective and contributing members of society. Yet regulations such as those proposed in the Conservative manifesto can produce anxiety and stress. The proposed legislative framework will open up prison oversight to litigation from prisoners, their families, and wider stakeholders if prison actors deviate from the prescribed framework. This will be costly for taxpayers and work against the sectoral improvement the government wants. We believe the self-regulation model can be improved by forging stronger shared priorities, leveraging resources, and brokering multiple accountabilities across partner organisations.

Third, a statutory framework will only be as good as a standard operating procedure. The actual mobilisation of the work depends upon the [street-level bureaucrats](#): prison governors and staff, many of whom we interviewed. As one participant, a former chief inspector of HM Inspectorate of Probation and former chairman of the Youth Justice Board for England and Wales, pointed out, “prison staff spend more time in prison than most prisoners.” This is accurate: while the average prisoner stays for four years, many prison staff have had their jobs for a decade or more. Buy-in from prison staff is critical to ensure the statutory regime is a success.

We anticipate a great deal of local variation in the way the statutory imperatives are interpreted, particularly when it is leadership-driven and locally contingent. The question then will be how we can judge the success of the statutory measure, given such variations from one prison to another.

Budgetary restrictions and changing the mindset

The fourth problem with the proposed change is that legislation will be futile without fiscal support. The penal system bears the brunt of austerity. The prisoner-to-staff ratio [increased](#) from 4.9 in 2013 to 5.8 in 2016, and [assaults](#) on both prisoners and prison staff increased. Given that the impact on prisons is still unfolding, one of us has research in progress investigating the impact of austerity on prison establishments in England, with a particular focus on health and wellbeing.

Fifth, rather than fixating on the prison legislation agenda, the focus should be upon [changing the mindset](#) of politicians, the media, and the public to become more receptive towards the prison rehabilitation agenda. The tough-on-crime stance of the government can impede that, and the lengthy and poorly-considered sentencing guidelines do nothing to help. A paradigm shift would allow judges to impose [community sentences](#) to avoid the continued growth in the prison population and allow jails to concentrate on more serious offenders.

Legislation aside, [better media messages](#) would do a great deal to educate the public about prison rehabilitation. Messages that focus on reducing reoffending could be used to frame rehabilitation programmes in a way that benefits the public, particularly in a declining economic climate, rather than fuelling a desire for more and tougher punishment.

A poisoned chalice

Rather than introducing risky new legislation, we should learn lessons from an [existing law](#) that appears to have done very little to ease the suffering of older prisoners. Prisons as institutions are best left to their own devices. Echoing one participant, who is a prison advocate, “we just need to make sure that what is in place at the moment is being implemented properly.” Transformations must be voluntary rather than coerced. We believe that there is enough goodwill among those who work in the sector to improve the conditions without statutory imperatives - provided that they receive enough support, resources, and leadership from the government to make English prisons work again.

This post represents the views of the authors and not those of Democratic Audit.

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