

9th February 2016, London

Letter from the UK by Phil Wheatley¹

This is the fifth in a series of occasional letters from the UK that since August 2013 have followed the twists and turns of UK Government policy on prisons and community corrections. Coincidentally, I began writing this letter on the day our Prime Minister, David Cameron made a major speech² to announce a major overhaul of prisons and their management.

There are proposals in this speech that are to be welcomed (such as the commitment to reform and rehabilitation, and the greater operational freedom offered to prison Governors), there is much that is not said (in particular about the significantly different directions taken by each of his three Secretaries of State for Justice and the consequent demands on prison managers of managing significant change), and there are a series of substantial issues that will have to be faced with these latest policy proposals. I shall address all three in this letter, along with the relevant context. Mainly, however, the new proposals seem to view prisons as independent and competing establishments, rather than one integrated system, and there is no recognition of the resource implications of securing the improvements the Prime Minister outlines. So the politically challenging issues of reducing the overall prison population and/or restoring adequate funding are ignored.

He described the current situation as "the scandalous failure of prisons". He omitted to mention that a sharp decline in prison performance began in 2010, when he became Prime Minister. This slippage in prison performance has continued since then, with a steadily increasing level of violence between prisoners, more assaults on prison officers, a higher incidence of suicide and in 2015 the highest ever number of murders in prisons. Nor did he mention the 25% reduction in prison budgets over the same period. The outgoing Chief Inspector of Prisons Nick Hardwick has identified this reduction in funding, and the staff reductions and major changes to prison routines that it precipitated, as some of the main factors contributing to the decline in prison performance, which his Prison Inspectorate has been clearly evidencing in its reports, including the most recent Annual Report published in July 2015.

In his speech David Cameron announced changes that he believed would reverse this period of poor performance. He said he intended to give Prison Governors greater autonomy over the use of the budget for their individual prisons, along with the power to commission locally services like education.

He omitted to mention that Governors had actually lost the power to commission many such services under his Government as a direct result of their policy to save money by contracting out services on a large scale in order to gain economies of scale.

Cameron did not remind his listeners that his last Secretary of State for Justice, Chris Grayling had approved the imposition of standardised prison routines with tight staffing levels in order to reduce cost to manage within the reduced budget allocated to his Justice Ministry. Nor did he reference his own previous speech on prison policy made on the 21st of June 2011 when he ruled out radical Government action to reduce the prison population and affirmed that prisons should be places of punishment. Nor did he remind his listeners of his decision to remove Ken Clarke as his first Secretary of State for Justice in September 2012 after Ken attracted criticism for proposing to reduce the prison population.

An analysis of the reform proposals in David Cameron's speech must begin with an understanding of the context, including the two previous major policy initiatives on prison and corrections reform announced since May 2010.

In July 2011 the Secretary of State for Justice, Ken Clarke announced a major programme with the title 'Competition Strategy for Offender Services'. Initially the operation of eight public sector

prisons and a private sector prison, Wolds, were subject to a competitive tendering process. This was to be followed by a rolling programme to compete over a period of years the operation of all non statutory services overseen by the Ministry of Justice, including prisons.

On 8th November 2012 the new Justice Secretary, Chris Grayling abandoned the strategy of competing all prisons and said there would be no further competitions for the operation of existing prisons. Following on from that in November 2013, Mr Grayling announced he had also terminated the competition for seven prisons that was already in progress. Only two prisons (Castington and Acklington) of the initial nine completed the procurement process before it was abandoned. A contract was awarded to Sodexo in July 2013 to run these two prisons now renamed "HMP Northumberland".

In his announcement on the 8th November 2012 Chris Grayling substituted an alternative policy to that of competing individual prisons. He asked the Prison Service to speedily implement a programme of imposing standardised routines on prisons, based on tight centrally approved staffing levels. He maintained this was the only viable way of making the savings required to keep within his budget without having to reduce the prison population. For the same reason he decided to put out to contract on a national basis services like facilities management which were regarded as a non-core custodial activity. He also announced his intention to put out for competition the resettlement work done in prison and most of the work done by probation services. He badged this programme as a 'rehabilitation revolution' and announced the contracts would be let on a regional basis. The savings which he expected to make by adopting this strategy were to be re-allocated so that short term prisoners could be placed on licence, with supervision and support in the community for a year following their release from custody. This programme of work, including the contracting out of facilities management of prisons, was completed just before the May 2015 General Election with the new contracts for resettlement and community rehabilitation going live from February 2015.

These were major change programmes with extensive work not only for the Ministry of Justice and the National Offender Management Service but also for private and charitable sector providers. They created great uncertainty for all the staff in scope. Many were deeply worried about job security and concerned that their terms and conditions would change for the worse. At the same time the programmes created a degree of planning blight, with those services being competed not being subject to the normal investment and improvement processes, which were put on hold until the results of the competition process were known. In the face of such substantial change and budget reduction a deterioration in prison performance was predictable and inevitable. It is perhaps surprising that it has not been much worse given the scale and intensity of the budget reductions and changes over a such a short period.

In the Prime Minister's speech, delivered on the 8th of February 2016 to an audience at the Public Policy Exchange think tank, he announced another radical change of direction and one that directly countered the reforms so recently implemented by his own Government. The value of economies of scale provided by centrally led contracts were rejected. Instead the Prime Minister announced that the school Academies model will be adopted giving "governors unprecedented operational and financial freedom". They will be given "total discretion over how to spend" their budget and they will "be able to opt-out of national contracts and choose their own suppliers".

The Prime Minister explicitly abandoned another element of his Government's policy, that of ministerially directed central control to standardise regimes for prisons and thus ensure they are tough enough to satisfy the public demand for punishment. The Prime Minister was silent on the current policy of centrally developed evidence based interventions being prioritised over others, implying that with local autonomy now back in fashion there is no support for this way of operating, except for programmes dealing with radicalisation. The Prime Minister was clear that prison governors will "be able to tailor their own regimes". Success will come from giving "much greater autonomy to the professionals" and "empowering staff as well as charities and businesses to innovate and try new things". Professionals will be in the lead and the "bureaucratic micromanagement that disempowers them" will be removed; they will be held "to account with real

transparency over outcomes" with "better data to allow meaningful comparisons to be made between prisons so the best performing institutions and best performing leaders can be recognised and rewarded". He said that "piecemeal, fragmented solutions don't work, you need to see how an individual's problems link together and intervene in the right way" by drawing on "the latest behavioural insights evidence and harness new technology".

He made no reference to the hard evidence of how between 2000 and 2009 the Prison Service improved the reoffending rate by over 23% for prisoners serving over two years and by over 12% for shorter sentenced prisoners serving between one year and up to two years. This improvement was secured by running centrally devised offending behaviour programmes based on evidence and rigorously implemented, well funded education programmes, detox and drug treatment programmes equivalent to health best practice in the community, all backed by well staffed prison regimes based on decent treatment for prisoners. These substantially improved results have now begun to be reversed as budget cuts have reduced the ability to provide such interventions and regimes have reduced as a result of lower budgets and less staff.

There are some contradictory messages in the speech. The Prime Minister says he is going to "allow new providers and new ideas to flourish" and because he says state monopolies are very slow to change he will ensure "there is a strong role for businesses and charities" in the operation of the six prisons piloting the new reforms and the nine new prisons that will be built in this Parliament. This suggests that there will be some restriction yet to be specified on the freedom of Prison Governors to decide how their prison is to be operated in order to ensure businesses and charities are involved, and would seem to contradict the apparently drive for autonomy as the answer to progress.

The one area in which the Prime Minister did endorse centrally devised programmes however was in an important section of his speech on countering radicalisation. He said that the purpose of these programmes is "for countering the non violent extremism that can lead to terrorism and violence". They will be focused "on those at risk of radicalisation, regardless of the crime they originally committed, as well as those convicted of terrorism offences and to deal with the most serious cases, just as we introduce mandatory de-radicalisation in the wider community, we will also introduce these in our prisons".

Although his speech appears very strong on empowering Governors, the Prime Minister implied doubts about the skills of existing prison leadership as he said he intended to "put rocket boosters under direct entry and fast-track schemes to attract the very best into managing the prison system so that it can benefit from greater diversity, fresh ideas and new leadership".

The Prime Minister did not specifically address the resourcing issues raised by the outgoing Chief Inspector of Prisons. He promised no new funding, though he did pledge to protect in cash terms the existing prison education budget. Nor did he propose any significant reduction in prison population, but rejected "the idea that prisons are packed to the rafters with people who don't deserve to be there.....and that somehow we could release tens of thousands of prisoners with no adverse consequences as nonsense". He endorsed the incapacitation effect of prison as "absolutely vital" and confirmed the need for the tougher approach to sentencing introduced by his Government. This tougher sentencing has already increased the length of sentence for many serious crimes and has been the main factor keeping the prison population at a very high level, consistently above 85,000. The Prime Minister did however use his speech to reject any further need for "ever higher levels of incarceration".

In spite of the current tight resourcing of prisons and his endorsement of the current sentencing tariff he was content to commit the prison system to what he described as "full on prison reform" so that we can "lead the world with new rehabilitation techniques and smarter ways of managing prisoners" that will "deliver lower reoffending rates". There can be no doubt therefore that he intends these reforms to be yet another major change programme, announcing that these new ideas will first be tested in six prisons before a national roll out would begin.

There are a number of important but complex issues that have not been addressed in the speech but which need to be considered fully before any reasoned assessment can be made of what is proposed. Some of these issues will need to be carefully examined during the six prison pilot stage.

The first is to recognise the pressure and uncertainty on management of prisons caused by the stream of major policy changes announced over the last five and a half years, which have had to be delivered at the same time as a 25% reduction in budget. The Prime Minister's speech on the 8th of February marks the third change of direction on prisons since he first came into office. To date all of these policies have incurred full start-up costs, but none have been persisted with long enough to deliver all the planned benefits. The changes of direction are not minor but rather a wholesale reversal of previous policies. This process of partially implemented change followed by a rapid about-turn to go in exactly the opposite direction has proved to be a major distraction for prison managers at all levels at the same time as they have been faced with pressing operational issues like coping with the effects of new psychoactive drugs, adjusting prison regimes to reflect the increasing number of older prisoners, and the higher proportion of prisoners serving very long sentences. If the Prime Minister's latest reform policy proves similarly short term and impracticable it is likely to do more damage to prison performance.

The second issue for consideration is the apparent lack of recognition that prisons are not stand-alone institutions but rather they operate as part of an integrated system. For example most medium and long term adult male prisoners will not serve their sentence in a single prison but will instead move down through the security categories as their risk of escape and risk to the public reduces. Typically they will start their sentence in a secure local prison serving the courts, then be allocated to a medium secure training prison and finally for the last part of their sentence to an open prison. This is an efficient way of operating as higher security drives additional cost in prisons and it is therefore very wasteful of scarce resources to hold prisoners in higher security conditions than are required to keep them in custody. In most cases more than one prison will play a part in reducing a prisoner's risk of reoffending so attributing their success or failure to a single establishment is simply not possible.

Measuring success in rehabilitation is in any case difficult. It cannot be judged until prisoners have been released long enough for them to reoffend and for their crimes to be investigated and prosecuted, typically an eighteen month period after release. The problem is compounded by the length of time prisoners spend in prison. For example on average for prisoners being sentenced to an indeterminate sentence it will be over seventeen years before the rehabilitative success of their imprisonment can be measured. There are over twelve thousand prisoners serving such sentences so this is not a trivial issue. Many other prisoners have very long fixed sentences with release dates that are years away, raising similar issues. Some prisons, for example the five long term high security establishments, have a population exclusively drawn from this group making it very problematical to judge their success in terms of reduced reoffending. Deciding which of the many prison governors they will encounter over their lengthy period in prison should take the credit for the prisoner's success or failure will be impossible.

The next pressing issue is to identify which of the present prison instructions can safely be abandoned. Most prescription has a purpose though sometimes it has simply been to implement the wishes of a particular Minister. Chris Grayling's decision to ban books from being handed in for prisoners or Jack Straw's intention to prevent prisoners having a pay rise or enjoying parties are good examples. However some operational specifications and standardisations play a more critical role and it will cause significant disruption if they are abolished, such as those that ensure prisoners can be transferred between prisons without excessive disruption to their engagement with the process of reducing reoffending. This is easier if there is some standardisation of regime and offending behaviour work between prisons but it will become much more difficult if each prison governor is encouraged to pursue their own individual approach. Also required are standardised documentation, a nationally shared prisoner information system and a degree of standardisation on what prisoners are entitled to have both in their possession and in their stored property. Without this bureaucratic minutiae the process of transfer will create inefficient repetition of administrative

work and much disruption and aggravation for the prisoner. Other standardisation, for example recruitment of staff, procurement of supplies or setting of terms and conditions for staff allows the prison service to exploit its collective bargaining power to secure lower prices or to centralise and use digital technology for the many repetitive tasks which would otherwise need additional staff at each prison. Delegating these tasks to prison level may increase local ownership and influence but will raise costs. It is interesting to note that in the same week that the Prime Minister announced the intention to abandon this centralised approach for prisons, the Government's review of efficiency in the NHS led by Lord Carter recommended the opposite, i.e. taking a centralised approach to the same issues in the NHS.

The Prime Minister was silent on the issue of perverse incentives but in a prison system where Prison Governors' pay will depend on achieving specific results, care will have to be taken to avoid incentives which impact adversely on the success of the whole system. A good example is the current practice where Governors will take difficult prisoners on transfer in order to help stabilise another prison, or will hold out of area prisoners to relieve population pressure elsewhere in the system. Both these practices are very helpful in the overall context of running a stable prison system but they can make it more difficult maintain the type of positive ethos that best supports reducing reoffending. There is a serious risk that autonomous Governors judged on performance will be resistant to facilitating such transfers because of the impact on their own prison. Even if they are not able to refuse outright there are lots of less overt ways to resist that will make it more difficult to run a stable prison system.

The Prime Minister listed the performance criteria on which he envisaged Governors being judged, rather than having to comply with all the current 924 prison service instructions which he said created a "morale sapping, initiative destroying culture". The new performance measures he outlined as being "reoffending levels compared to the predicted rate, employment outcomes for prisoners; whether or not the offender went into permanent accommodation; and what progress was made on basic literacy and key skills".

Unusually he did not include any measures of custodial success or of prison safety in his list. Most Prime Ministers have valued the prevention of escape and prison riots. These events are rare but when they happen they undermine confidence in the whole prison system. The failures in the late 1960s and in the mid 1990s to prevent the escape of high profile offenders including some of the Great Train Robbers, a Russian Spy, convicted IRA terrorists and other serious violent offenders were public scandals that brought the Prison Ministers responsible to the brink of resignation or dismissal.

In order to ensure high profile escapes did not recur much investment has gone into standardising security procedures, ensuring they are carried out thoroughly and prioritising this work over all other areas. Similarly a lot of staff resources are required to make prisons safer for example by supervising prisoners properly, by collating intelligence on threats to good order, by controlling potentially dangerous items like knives and by searching to detect illicitly obtained items such as drugs. Preventing suicide is another example of vital staff intensive work which requires prisoners at risk to be identified and for staff to intervene effectively.

If as the Prime Minister's speech suggests these crucial areas of prison operation are either not included in the measurement of success or are not otherwise valued it is highly likely that some of the resources currently allocated to them will be reassigned to those areas that are measured. This will make prisons less safe and increase the risk of escape and disorder.

The most important issue on which the speech was silent is funding. The key facts from what he said are that the Prime Minister is not prepared to countenance any action that would significantly reduce the current prison population (85,679 on the 12th February 2016). He commits to the policy of building nine new large prisons first announced by Michael Gove on the 9th November 2015, which will allow many smaller and older prisons to be closed. The operating costs of large new prisons are lower than small old prisons so this will produce a saving but this is not available for reinvestment, rather it is required to help the Ministry of Justice make the cost savings required to

manage within their tough budget settlement. Therefore it is likely that further savings will be required from prison budgets. The most optimistic scenario is a flat cash allocation to existing prisons over the next four years. Around 80% of prison spending is staff related so the only obvious way of making further reductions is by more reductions to staffing levels or reduced staff wages. The latter option does not seem a realistic option at least across London, the South East and much of the Midlands where recruitment of new staff is already proving difficult. What is without doubt is that a significant increase in funding is required if staffing levels are not just to be held steady but to be increased. The current tight levels of staffing have been blamed by the Chief Inspector of Prisons in his Annual Report for 2014/15 as a major factor in the increase in suicide and violence in prison. The most the Prime Minister appears to be offering is a hope that when freed from central contracts and prescription Prison Governors will find a no cost solution to this issue, which up to now no public sector or private sector operator has been able to do. It would seem that therefore this is a political solution based solely on Ministerial optimism and accordingly it should be viewed with genuine scepticism.

These reforms deal with very difficult issues and so it is particularly important that the pilot about to be conducted in six prisons should provide a realistic test of the proposed changes. Simply proving that six handpicked Governors in carefully selected establishments, particularly if they are given additional resources, can secure immediate improvements will not mean the same changes will work well at full scale in the long term. In assessing the outcome of the pilot to judge whether it is truly workable at scale it will be important to look not only at the formal measures, but also to take into account other factors, for example whether the governors who have run the pilot prisons have been selected for their exceptional skills and leadership qualities, skills that are greater than those of the average prison governor, whether additional resources (either money or exceptionally skilled staff) have been allocated to help them and whether the pilot prisons been protected in any way from the normal flows of prison population.

In summary, the Prime Minister's commitment to prison being a place where reform and rehabilitation are central is to be welcomed. His willingness to allow Prison Governors more operational freedom to achieve this is also very positive and could make it easier to run positive and decent prisons if it results in less detailed prescription and control from Ministers.

However the risk of failure is more likely if Ministers fail to understand the complexities of operating prisons as an integrated system and make the mistake of thinking they can be judged on a few simple measures as stand-alone institutions. Importantly they must understand the adverse consequences of the constant churn and reversal of Ministerial policy that has been a feature of the last five years.

Crucially however, political willingness to fund prisons at an adequate level to deliver the benefits and improvements that Ministers' want is essential. At the moment the Prime Minister's unwillingness to reduce the size of the task by taking action to reduce the prison population and the Chancellor's inability to allocate additional funding because of his policy of continued austerity make it likely that this latest reform, like the many others before it, will fail and simply prove a distraction to the real business of running effective prisons.

¹ Phil Wheatley was appointed Director-General of HM Prison Service on 1st March 2003, the first Director-General to have previously been a prison officer. On 1st April 2008, the Prison Service was merged with the National Probation Service to create the National Offender Management Service (NOMS), which he subsequently led as Director-General. On 14th June 2004, he was made a Companion of the Order of the Bath (CB) on the Queen's Birthday Honours List. He retired in June 2010. Jack Straw, Justice Minister during Wheatley's time as Director General of NOMS, praised him as "an extraordinarily dedicated individual" with "a record of public service that is second to none". Phil Wheatley went on to serve as a member of the Northern Ireland Prison Review Team led by Anne Owers. The Review Team report was accepted in full and is currently being implemented, committing the Northern Ireland Prison Service to regimes based on desistance criminology. He is currently a non executive director for the Northern Ireland Prison Service, and in a consulting role he has worked for the Foreign and Commonwealth Office, the Government of Bermuda and the private company G4S which operates prisons and justice services in the UK and elsewhere. His successor is Michael Spur who was previously the Chief Operating Officer of NOMS.

² David Cameron's speech at the Policy Exchange, 8th February 2016
<https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>