



Ministry  
of Justice



Home Office



Department  
of Health &  
Social Care

## Independent Advisory Panel on Deaths in Custody

### Minutes of the Independent Advisory Panel meeting 29 April 2020

#### Attendees:

**Juliet Lyon - Chair**

Seena Fazel

John Wadham

Jenny Talbot

Deborah Coles

Jenny Shaw

Piers Barber, Head of Secretariat

Kish Hyde, Secretariat

Adrian Blake, Secretariat

Alison Bernard, Secretariat

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#### Item 1: Feedback from panel-only session, minutes and actions from previous meeting

##### Meeting with Minister Frazer

1. Juliet fed back from her meeting with Minister Lucy Frazer which covered much of the ground that the panel had discussed at their meeting earlier in the day. They discussed how thankfully the situation had not yet reached the worst-case scenario in prisons that had been predicted; there was 10% staff absence and 15 prisoner deaths. The Minister was supportive of the idea of reconvening the Ministerial Board.
2. Juliet explained to the Minister that the sole role of the panel is to prevent deaths in custody by giving the best advice but cannot do this properly unless the panel is involved at an early stage and at a deeper level. The Minister accepted this point and will take back to colleagues.
3. The Minister also spoke briefly about the following:
  - Courts are taking notice of the advice given to them about holding prisoners in the current climate; 25% of prisons are following the cohorting strategy and others will do so as and when they can.
  - Some lifting of regime restrictions is being looked at and prisoner/staff relationships seem to be good.
  - She welcomed the IAP's upcoming work with Prison Radio.

- The release programme is complex - the availability of accommodation, risks and safeguarding checks all have to be considered.

### **Minutes of previous meeting**

#### Immigration:

4. John stated that all work referred to in the minutes had been suspended. The panel would await the litigation material from Frances (see para 23) and then make further decisions. Deborah asked that the panel not lose sight of the outcome from the inquest into the death of Prince Fosu. The panel asked for Secretariat support in taking forward projects discussed at these meetings – Piers will take the point about Secretariat contributions into future planning.

#### Prisons:

5. The work on the Magistrates Association (MA) survey was ticking over. Jenny T had had a positive meeting with the MA and Amy Rees, Director General of Probation and Wales, before the lockdown during which they discussed plans for an article for the MA Journal et al. Jenny would draft this in collaboration with MA and probation.
6. Keeping Safe:  
Juliet wanted to lay out the IAP's follow-up actions to the conference to speakers and delegates in writing by 30 April. Adrian would arrange a mailout. An action list had been agreed by the panel after the conference which was now on hold but Juliet will circulate for information. The panel had agreed that there will be no formal evaluation of the conference.

**Action 1: Juliet to prepare email and Adrian to arrange mailshot to Keeping Safe delegates about conference follow-up actions.**

**Action 2: Juliet to circulate follow-up action list from Keeping Safe conference to panel for information.**

**Action 3: Jenny T to prepare second article for the Magistrates Assoc journal**

#### **Item 2: Co-sponsors update and discussion on scope for MBDC meeting**

7. Juliet welcomed the co-sponsors to the meeting who would give an update on steps taken as a result of Covid-19.

#### Prison update (Nick Poyntz)

8. The latest safer custody statistics will be released on 30 April covering deaths up to the end of March. Significant guidance has been given in relation to prisoners who have an open ACCT and those who are particularly vulnerable. ACCT training materials (usually delivered nationally) have been made available locally for prisons that have the capacity. Information has also been provided to governors on how best to provide peer support. Group Safety Leads have been asked to continue to carry out early learning reviews on self-inflicted deaths, and a Wellbeing Support Plan has been distributed.
9. Joint working is taking place between the NHS and the prison service – e.g. isolating vulnerable people, supporting social distancing within the prison. More staff are now becoming available due to the redeployment of HQ staff.
10. Juliet suggested that the number of deaths should be published weekly and highlighted that the PHE guidance is clear that if more people are released,

more lives will be saved. Nick will feedback the views of the panel to HMPPS colleagues. Nick also noted that the panel had written to the Lord Chancellor, Robert Buckland, regarding releasing prisoners and that they should share findings from the Prison Radio project with the policy teams.

11. Deborah stated that both the number of Covid-19 and self-inflicted deaths should be published, and asked what is happening in relation to family liaison after a death and if any guidance has been given.

**Action 4: Nick to speak to Chris Barnett-Page about publication of numbers of deaths from COVID-19 and family liaison and feedback to panel.**

#### Immigration Detention Centres (Frances Hardy)

12. Steps the Home Office has taken in response to Covid-19 include:
  - a. housing all detainees in single rooms;
  - b. adhering to social distancing guidelines across the detention estate;
  - c. offering vulnerable detainees separate accommodation and writing a personal care plan for them; and
  - d. Introduction of reverse cohorting – any new detainees are placed in a separate room for seven days.

13. A large number of detainees have been released as they cannot be removed from the country - legislation states that individuals can only be detained if there is a reasonable prospect of their removal. The releases started in February so the immigration estate is now much smaller, with only 300-400 detainees across the whole estate.

14. The Home Affairs Select Committee is carrying out an inquiry into the Home Office response to Covid-19; evidence submitted is available on the Home Office website. Oral evidence will start next week (4 May). IRC supplies will also be giving evidence, Frances will check the dates and share with the panel.

**Action 5: Frances to check date the IRCs will be giving evidence to the Select Committee.**

15. Two detainees have tested positive for Covid-19 though both are now recovered. One detainee who was released also tested positive (the results came back after the release). Four members of staff have also tested positive.
16. There are a number of Judicial Reviews ongoing; as well as pre-action protocols relating to detainees. There was a recent High Court decision that ruled against Detention Action. Some NGOs have started a campaign to release people from detention, approximately 50 letters have been received from MPs.
17. John asked about how risk assessments have been made. Material has been given to litigants which covers guidance relating to which countries are accepting detainees and what the process is.
18. Removals have mostly been voluntary returns and all staff involved with returns are provided with PPE. John questioned what happens in the case of

non-voluntary returns - Frances will find out. Panel members called for more transparency about data – i.e. numbers of detainees with Covid-19 deaths. The Home Office will need to get permission to share the data.

19. An Independent Chief Inspector of Borders and Immigration (ICIBI) report was published this afternoon on adults at risk in immigration detention.
20. The Home Affairs Committee is conducting an inquiry into Home Office preparedness for Covid-19.

**Action 6: Frances to**

- i) **share witness statement for Detention Action which covers what has been done;**
- ii) **find out what happens in the case of non-voluntary returns, and**
- iii) **enquire about permission to share data about deaths from COVID-19.**

Police Custody (Steven Toal)

21. The police have been given a significant increase in powers, in particular Schedule 21 of the Covid-19 Act (dealing with infected persons) which allows them to steer infected people towards medical facilities (to be used as a last resort).
22. The NPCC (National Police Chiefs' Council) has put out guidance on social distancing, isolation and PPE, and the police are ensuring individuals still have access to solicitors. The panel asked Steven to find out if there have been any additional callouts to mental health settings.
23. There had been no Covid-19 deaths in police custody and numbers received into custody suites had dropped.

**Action 7: Steven to find out if there have been any additional callouts to mental health settings.**

DHSC (Angela Hawley and Cathy Smethurst)

24. Mental Health Act easements have not been 'turned on' and DHSC want this to continue if possible. NHS England published refreshed legal guidance on Covid-19 which has guidance on cogent reasons to depart from the typical practice. It also gives advice on where it may be appropriate to use digital processes for assessments.
25. The panel inquired about the lack of publication of figures related to deaths at high, medium and secure level and numbers that have tested positive. Juliet reiterated concern around particular accountability for people in state custody.

**Action 8: Angela to find out if data on deaths is published and share if available.**

Ministerial board

26. The Prisons Minister is in favour of convening the Board, as is the Home Office Minister, Kit Malthouse. DHSC have not heard from their Minister and were unable to comment. They will check with Nadine Dorries' Private Office.

**Action 9: DHSC to check with the Public Health Minister about reconvening the Ministerial Board**

### **Item 3: Meeting with HMIP, PPO, IMB re independent scrutiny**

27. Juliet welcomed Peter Clarke, Sue McAllister and Anne Owers and highlighted the Panel's strategic priority to focus on independent scrutiny of deaths in custody as well as active steps to protect life.

#### PPO (Sue McAllister)

28. PPO are continuing to investigate, albeit without full access to prisons. Partly completed investigations are being completed and they are also starting new death investigations, though interviews are being carried out via video calls or phone. Most prisons are able to facilitate these interviews.
29. Access to documentation and evidence is more challenging. A list of requirements has been communicated to prisons, but the logistics of getting evidence to investigators is a challenge. Establishments have been asked to send documents electronically and most are able to.
30. PPO were originally putting in place contingency planning for the eventuality of thousands of deaths, though it then became clear that numbers were lower than modelling indicated, meaning individual investigations have been able to be continued. Most senior investigators are now allocated to Covid-19 deaths though a full cohort of investigators is not currently available.
31. The PPO have spoken to Phil Copple and Amy Rees about returning to prisons in a limited way and is putting together a paper on the benefits and risks.
32. Deborah raised that it was understood that there had been six recent self-inflicted deaths and asked about communication with families and whether guidance had been shared with governors around preservation of evidence. There were also questions about what would happen once the emergency is over, particularly in the context of a potential public inquiry.
33. Juliet encouraged Sue to consider PPO publishing a thematic report on Covid deaths in addition to reports on individual deaths.

#### IMB (Anne Owers)

34. Although IMB's statutory right to enter establishments remains the same, in practice only a few boards are carrying out visits. The majority of work is remote monitoring, including dialling in to meetings and segregation reviews. A freephone line for prisoners has been created; this is clearly more effective when prisoners have access to in-cell phone calls – the case for around 50% of the population. Some very useful information has emerged.
35. Isolation means no showers or contact. This has led to IMB concerns that people are reluctant to report symptoms because they do not want to be put in such difficult isolation conditions. Once courts resume, capacity issues will increase and lead to greater difficulties in cohorting within establishments. Proper protective equipment for staff will be key to easing need for isolation.
36. IMBs have concerns about frustrations building up and pressure on local establishments. Also concerned about failures to release medically vulnerable people on compassionate grounds.

### HMIP (Peter Clarke)

37. HMIP suspended normal inspection processes on 17 March though do not consider any change to their right of duty to enter prisons and other places of detention. A new methodology has been developed based on a 'no harm' principle with the intention of avoiding a significant burden placed on establishments. Focus is particularly on safety, health and basic human/legal rights. The result is 'short scrutiny visits' being carried out on thematic basis. The HMIP have been to three YOIs, and will be visiting IRCs, training and women's prisons.
38. Key findings so far:
- Internal communication has been of fundamental importance. Prisoners are accepting of the situation, and can see developments are a replication of activity in the community. However, if restrictions are loosened in the community but not in prisons, this understanding could fall away.
  - Self-harm and assault on staff reductions should not be used as an excuse to slow up return to normal regimes. Some work should be done to investigate this.
  - There has been some progress to relieve isolation in the form of activity packs and use of technology to provide access and contact.
  - Resettlement work is largely poor and some prisoners are being released without accommodation. This relates to the early release programme and the need to ensure those released 'normally' are not made more vulnerable than they are in the prison.
39. Discussion: Phil Copple has prioritised safety with governors, as have HMIP in inspections. Safeguarding issues have arisen regularly which has necessitated contacting the prisons. There is limited scope for individual governors.
40. Anne made the point that ministers must balance risk of explosive infections against the mental health implications of maintaining isolation – an outbreak in prison would be extremely serious and will not be resolved until more testing or fewer prisoners.
41. Problems with the early release programme include the risk of domestic violence; reduced police intelligence; release location; and the need for people to meet over-complicated/bureaucratic requirements. It has been hindered by lack of safe accommodation, made increasingly difficult by the fact local authorities are now also required to house rough sleepers. Approved premises are struggling to provide single space accommodation. This could have an impact on number of deaths post-release.
42. The overall prison population has dropped by around 3,000, mainly on supply side as courts are not sitting and there has been a drop in the crime rate.
43. Health issues have worsened although Occupational Health teams in prisons are still operating; GP consultations are held by telephone, and dental services are available only in emergency cases. Psychiatry staff are going into prisons only in emergencies and all psychological support for children and young people has been withdrawn.

44. Scrutiny body members all agreed that it would be useful to reconvene the Ministerial Board, with a tight focus on Covid-19.

**Action 10: Secretariat to ensure that up to date information, including helplines and contacts for intelligence gathering are available on IAP Covid-19 information hub**

**Item 4: Revised work plan and Working with Secretariat**

45. Much of the Panel's current work is focused on COVID-19 response. John suggested a discussion on how the IAP could feed into/prompt any future inquiry in to how the government have handled the process of deaths in detention regarding COVID-19. This would focus on learning lessons and involve holding people to account.
46. Jenny Shaw is continuing with the natural deaths work. A meeting is taking place w/c 11to discuss next steps.
47. Jenny Talbot will lead IAP contribution to consultation on Mental Health Act white paper.
48. Seena and Andrew had been working on an IAP statistics publication. Piers will pick this up with Seena in their 1-1 next week.
49. The panel will need to discuss at the next meeting what the IAP's priorities should be during the pandemic. Current work is largely focussed on correspondence with ministers and keeping the online hub updated. Juliet and Piers to work on work programme initially, which will include a COVID-19 emergency schedule.
50. Juliet encouraged the panel to reflect on the panel's way of working and consider what has and has not worked effectively.

**Action 11: Juliet and Piers to develop 2019/20 work programme and Covid schedule.**

**Action 12: Piers and Seena to discuss IAP statistics project and progress.**

**Support from the Secretariat**

51. We are working to extend Alison's internship. Rachel Pascual has taken over from Nick as Deputy Director and lead co-sponsor.
52. Piers will start working full time w/c 4 May. He stated that the work is threefold:
- a. Supporting the panel deliver to work – drafting and collaborating but also support the panel to direct outputs towards strategic deliverables,
  - b. Running a secretariat function that organised, responsive, collaborative and knowledgeable.
  - c. Delivering a dual communications function – firstly creating an outward looking strategic visibility (i.e. website/social media/select committees) and secondly inward looking, looking at the institutions we are part of and helping to build relationship within MoJ/DSHC/HO.

**Next meeting:  
10.30am-4.30pm, 1<sup>st</sup> June 2020**