

The Prisons Handbook 2016



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**EDITORIAL - HAS THE TIME
COME TO ABOLISH INDEPENDENT
MONITORING BOARDS?**

Mark Leech

In March 1964 the then Home Secretary, Henry Brooke, using the powers of The Prison Act 1952, brought into force The Prison Rules 1964.¹

Rule 92 of these Rules established what were then called 'Boards of Visitors' but which today (and since 2003) are known as Independent Monitoring Boards, or "IMBs".

Members of IMBs are creatures of statute; they are public officials appointed by the Secretary of State and who occupy a statutory office that, according to a Parliamentary Written Answer in 2014², currently costs the taxpayer over £2m a year. They are not paid a salary, they are all volunteers, but they are paid their expenses in connection with their work.

Indeed the lack of remuneration is really what lays at the heart of so much that is wrong with IMBs, we expect them to carry out what can be a time-consuming, stressful, statutory function, and pay them nothing at all in return for their important work.

Broadly speaking IMBs exist to inspect and monitor prisons, deal with prisoner complaints and report annually to the Secretary of State.³

But the evidence today, as I shall set out in this editorial, is that they are a closed, internally-warring, secretive body, of unnamed public officials.

Some IMBs have concealed shocking, proven, criminal conduct by staff, in cases where prisoners have lost their lives, where prison officers have been handed jail sentences and indeed they have often gone further by misreporting these critical inconvenient truths by simply airbrushing them out of existence in their Annual Reports - a side-by-side comparison of the content of which shows text has simply been cut and pasted from one year to the next, as I shall later demonstrate.

In the powerful expose of IMBs, "Whistle-Blower Without a Whistle" that follows this editorial, written by a serving IMB Chair, we learn of a shocking system of IMB governance in which IMB Members are 'gagged by grooming', where they are 'coerced' into not carrying out their legal functions, and where Members are left demoralized, frustrated and unsupported.

It simply cannot be allowed to go on like this.

The truth today is that many of the IMB functions are now largely in the hands of other, more independent, public officials who did not exist when IMBs were born; namely the Prisons Inspectorate, which inspects and monitors prisons, and the Prisons and Probation Ombudsman, who exists now to deal with prisoner complaints.

In Scotland the system of IMBs has been replaced with a much tighter, more disciplined system, and one that is linked directly to the Scottish Prisons Inspectorate in a solution clearly worthy of consideration south of the Border too.

The principle of IMBs, (or 'Boards of Visitors' as they then were) who came into being 20 years before the Prisons Inspectorate was created, and 30 years before the Prisons and Probation Ombudsman first saw the light of day, was to inject into the prison system a form of independent scrutiny as to how each prison operated and how the prison treated its inmates.

IMB Members had (and still have) the right to visit the prison 'at any time'⁴, they can view the majority of its records⁵, interview prisoners out of sight and hearing of prison staff if appropriate⁶, and they are required to submit an annual report to Parliament by reporting to the Secretary of State⁷.

However, for the first thirty years of their existence IMBs also had powerful and damaging powers of punishment over prisoners. They were able to adjudicate on serious disciplinary offences by inmates, and they had power to impose (and were never shy about exercising) unlimited losses of remission effectively extending the time a prisoner had to serve.

It was a power completely at odds with their pastoral role, exercised in secret, without legal representation, with limited training, and which they so often so seriously abused that the role was removed from them completely in 1993.

Indeed it was following the Hull Riot in 1979, when the Hull Prison IMB toured the country and ordered almost 90 years worth of remission to be forfeited in a series of adjudications, each conducted in such a legally shambolic and wholly unfair manner, that the Court of Appeal decided for the first time that prison disciplinary proceedings were subject to direct judicial review by the courts.⁸

Following the opening of the courtroom door by the Court of Appeal in *St. Germain* the High Court subsequently quashed a whole series of prison disciplinary cases where IMBs were wrongly found to have refused prisoners permission to call defence witnesses; ask questions of witnesses called against them; had misapplied the law; wrongly refused legal representation or advice; admitted prejudicial inadmissible evidence; found guilt in cases where no offence had actually been committed, and even ordering that prisoners be charged with offences when they had no power to do so.

Small wonder then that, in the half-century since their creation, IMBs have earned a reputation among both prisoners and staff of dislike and complete mistrust.

Their failures to assert their independence has meant that confidence in them

has simply failed to develop. They are viewed today as a secretive organisation, cloaked in darkness even from the public who foots the two million pounds a year bill for their existence.

In March 2016 I applied to the Ministry of Justice for the names of IMB members who are appointed to each prison and YOI in England and Wales. It seemed to me a reasonable request and I did not anticipate problems. They are public officials who like prison governors⁹ (a list of whose names you will find in section 1.1.4 of The Prisons Handbook 2016)¹⁰ hold an office created by statute.

They are paid expenses from the public purse, appointed by the Secretary of State and as the National Framework Agreement published in March 2016 between IMBs and the Ministry of Justice (MOJ), makes clear:

*"IMBs cannot operate in secrecy. Prisoners need to know that they exist and how to make contact... IMBs must build a reputation for honesty and fairness... Board members should regularly engage with prisoners ... and do so with a courtesy and interest which earns their trust and draws out their hopes and concerns."*¹¹

In retrospect, I really should have known better.

My request for the names of IMB Members was refused by the IMB Secretariat who said: *"In this case, we believe that releasing the information could compromise the physical safety of IMB members..."*

"Board members live in the local area of the prison and Young Offenders Institute they monitor. They are therefore in much closer proximity to such establishments than many other public officials. This could make it easier for prisoners on release and their friends and families, to be able to contact IMB members."

*"Names are not required to be disclosed for the IMB Board to operate effectively. Members join and leave the boards continually and not at regular times. Names could therefore be out of date as soon as the list is published. Any matters for the relevant IMB board can be addressed to the IMB Chair, care of the relevant prison."*¹²

What was being completely ignored here was the public's right to know who these public officials are, but more than that, their objections are completely illogical.

For a start, every IMB Member is expected to wear a name badge when in the prison, some choose to have only their first name on it that is true, but many others have their full name printed, a fact that makes a nonsense of the refusal of my request for disclosure.

Each year The Prisons Handbook publishes the names of the current Chairman of the IMB for every prison and YOI in England and Wales, and has done for over 20 years; are we endangering the physical safety of that IMB Member by doing so? I have never heard of any case where that has happened and we have never been asked not to publish them.

The Prisons Inspectorate publishes the name of the IMB Chairman of each prison and Young Offender Institution that it inspects; around 50 a year. Am I seriously to believe that by doing so they are endangering the physical safety of that IMB Member?

What about Parliamentary publications on prisons by Select Committees? Their reports name IMB Members who give evidence to them – are they endangering their physical safety by doing so too?

Of course not.

And who are the 'IMB Secretariat' anyway?

Ostensibly they are a small team of civil servants, based inside the Ministry of Justice, who perform the administration function of the IMB nationally. The Secretariat deals with appointments to and removals from individual Boards. They carry out security background checks, and control the www.imb.org.uk website on which IMB annual reports are published. But, to borrow a phrase from Anne Widdecombe, they also seem to have 'something of the night' about them.

Like a form of Cold War secret police the IMB Secretariat are viewed with fear by many IMB Members – in the 'Whistle-Blower without a Whistle' article that follows this editorial it is clear *'the threat of removal is ever-present'*.

Whether that fear is real or imagined or has any basis in fact I do not know. But the legal fact is that IMBs are not answerable to the Secretariat; they are appointed by and report to the Secretary of State. Boards are independent, and 'independent' means exactly what it says – or it should do. Independence is not just a form of words, it's a frame of mind that you either possess or you do not.

The vast majority of IMBs seemingly do not.

Did the Secretariat refuse to disclose IMB Members names without even consulting IMB Members about it? I suspect they did. I have spoken to 12 people, on different Boards, who I know are currently serving as IMB Members and not one of their Boards had been asked whether they objected or agreed to publication of their names; and 11 of the 12 Members I spoke to said if they had been consulted they would have had no objection to their names being published.

One told me: *"My work on the IMB is widely well-known, I sit as a Magistrate, my name is a matter of public record, I often see people before the courts when sitting on the Bench, and then the same people later as an IMB Member in prison, and often because I have been responsible for sending them there."*¹³

While it is true that IMB Members come from the local community, the truth is that so too do all prison officers – officers whose names are well-known to prisoners and who wear name badges at work. Indeed the prison officer's role as Offender Supervisor, and the principle of dynamic security on which so much

real security information depends, rests on the close working relationship between prisoners and staff.

Of course the safety of IMB Members is important, I get that, but I know of no case where a prison officer has been sought out by former prisoners, or their family or friends, in order to cause them harm; and the reality is surely that if they did so then that is a matter for the police and the courts, and it cannot be used to support an arbitrary decision by civil servants to refuse to name them.

While I accept that Members of an IMB come and go, it is equally the case that prison governors also come and go too, all the time, they also all wear name badges, they again come from the local community, yet their names are published annually and without problem.

But it is not just prisoners, staff or even myself who seemingly has little faith in IMBs. From evidence given last year to the Justice Select Committee in the House of Commons, neither the Ministry of Justice nor the National Offender Management Service are seen as having much time for them either.

In their 9th Report – Prisons: Planning and Policies¹⁴, the Justice Committee revealed that the distrust and lack of confidence in the way prisoners view IMB Members is shared to a large extent by those who appoint and work with them.

The Justice Committee (at para 154 et seq) said this: *IMBs have a role in monitoring internal complaints. However, Paula Harriott suggested that prisoners have little faith in the wider scrutiny process of the prison system, including through IMBs. The Chair of the IMB at HMP Thameside said that while the fairness of responses was consistently monitored, it was equally important that they are provided in a consistent manner: “an apparently just response to a complaint is not really just if it cannot be understood”. Several Chairs of IMBs themselves believed that the MoJ did not have sufficient regard for concerns about prison conditions which IMBs had conveyed.*

For example, Dr Penzer, Chair of the IMB at Thameside, said: Everyone I have met in NOMS and the MoJ, from the Minister downwards, says they value IMBs. I think our existence increases their sense of security because if things were dramatically wrong we would say so [...] Although I believe that most IMBs play a useful role within the establishments where they are based, helping to ensure that staff do not slip into unfair or inhumane practices, I know of little evidence that IMB reports have a significant impact on NOMS or MoJ, or that changes are made in response to IMB judgements. Generally the responses to IMB reports go along the lines ‘ABC is an important point and the reason things are as they are is XYZ’. Rarely is the response ‘ABC is an important point that we did not know about and we are going to do PQR to put it right’.

In a further submission, he questioned whether the role of IMBs was sufficiently clear. He

observed: IMBs’ proper focus on independent monitoring has expanded...to include elements of advising and recommending. As soon as we advise or recommend our independence is compromised (you cannot independently monitor the implementation of your own advice). We take an interest in processes (where our expertise is at best questionable) and inputs rather than concentrating on monitoring outcomes. We write annual reports to which NOMS and MoJ often respond inadequately. My impression is that although the reports may sometimes be found to be ‘interesting’, they are seldom felt to be ‘useful’.

Angela Levin, former Chair at HMP Wormwood Scrubs, resigned because she felt there was such a chasm between the official perspective and the truth. She said: When I wrote the IMB report that ended in June 2013 on behalf of the board, the key point we all wanted to make very strongly then—which was before the cuts—was that the prison was on a knife-edge. I used that phrase and wrote about the violence, the self-harming and all the things we have already discussed. It was four months before I had any sort of reply. I then heard from the Prisons Minister, who in his letter explained to me how the prison worked, totally ignoring the point. I then sent another letter and was asked to go and see Michael Spurr, who is the head of the National Offender Management Service. I was treated like a naughty schoolgirl going to see the headmaster and was told, “You are completely wrong. You didn’t see that. No, no that is not happening.” I was not talking with my own voice—I was representing a board of people who were there a lot.”

I personally have no doubt that IMBs are capable in theory of fulfilling a vital supervisory role inside our prisons, the practice of having independent officials scrutinising how the State treats those in its custody and care is vitally important and not to be discarded lightly – but to be effective any truly independent watchdog must have the courage and ability to bark, publicly, loudly and truthfully when that is appropriate.

The evidence is that IMBs currently do not possess this vital ingredient to their role. The IMBs secrecy, poor image, failures to report critical criminal events, failure to assert its independence, lack of trust by prisoners and prison staff, and the refusal on frankly ridiculous grounds to release their names to the public who pay for them, simply can no longer be ignored.

Like the prisons they monitor, the time has come for IMBs to reform too.

They must come out of the darkness and into the light of public scrutiny themselves and discharge their functions professionally.

Who is to guard these guards, if not public scrutiny itself?

All IMBs are required to produce an Annual Report, and while the structure and content of these has improved greatly in the last three years, not all Boards decide to publish them. It should be a legal requirement that all Boards must publish their Annual Reports – and

they should be required to report everything they find, not just what they feel to be convenient.

All IMB Members have the legal power to visit prisons 'at any time', but it is a power they rarely if ever exercise at night. The damning article which follows this editorial explains how one IMB Chair (and it's a view I have heard expressed many times by many others) feels 'groomed' into not doing so because, as she says, it is 'frowned' upon.

Others IMB Members I know tell me privately the very same thing. Night visits are "frowned upon", another that they "are discouraged by the Board from going native" and a third that "staff have told me they do not like the disruption of a night visit."

But the evidence is that his failure to visit prisons at night is not some minor academic issue; it's an incredibly serious one.

In 2012 Shaun and Lisa Percy, married prison officers working at Preston Prison, were handed suspended jail sentences when they were convicted of misconduct in public office for covering up failings in suicide watch procedures on the night an inmate was found hanging in his cell.¹⁵

Shaun Percy failed to carry out half hourly cell checks on Christopher Oldham, who was on remand in HMP Preston.

His wife Lisa, the Night Orderly Officer in charge of the prison overnight, then made false entries into the care log to cover up for her husband's failings.

In one entry, Mrs Percy reported she had seen Mr Oldham standing at the back of his cell.

In another entry, made by Mr Percy, he said Mr Oldham was sitting on his bed watching television and had said he was OK when spoken to.

Medical evidence showed, and both officers in court accepted, that by the time these false entries were made, the truth was that the inmate was already dead.

What did the Preston Prison IMB have to say about this shocking criminal incident?

Nothing.

Absolutely nothing at all.

The three Annual Reports of the Preston Prison IMB, for the years 2011-2014 make no mention of this appalling criminal failure. Indeed it is clear that Section Four of each of these Annual Reports, which deal with deaths in custody, when compared side by side, have text that has simply been cut and pasted from one year to the next, with only the deaths in custody figures themselves being changed - they are all available on line at www.imb.org.uk/reports/ you can read and compare them for yourself.

Worse still is that each of the Preston Prison Annual Reports, between 2011 and 2014, airbrushes the shocking event out completely and says this: *The Safer Preston team continue to work hard at making Preston Prison a safer place to live and work. The committee meets each month. An IMB member has attended most of the meetings and*

always been made most welcome. The quality of the observations entered in both the ACCT and TAB documentation are reviewed at each committee meeting with any relevant comments being fed back. These are generally of a high standard.^{15a}

But that simply isn't true is it?

How can the documents be of a 'high standard' when they are falsified, and prison staff has been convicted and handed suspended jail sentences for doing so?

The Secretary of State and the public has the right to be told the truth - and the IMB at Preston Prison should hang its head in shame for its failure to report this critical event in its Annual Reports published around this time; what else are these public watchdogs failing to bark at, and to tell us about?

What other inconvenient truths are being airbrushed out of existence?

Small wonder confidence in their independence is virtually non-existent.

And the failures of the Percy's are not the only example of such appalling behaviour either.

In April 2014 a Maghaberry prison officer was also handed a 15 month suspended prison sentence after admitting he had not kept a proper watch on a suicidal prisoner who hanged himself.¹⁶

Daniel Barclay pleaded guilty in court that he had "wilfully neglected to perform his duty without reasonable excuse or justification, in that he failed to carry out and record the appropriate observations in respect of a prisoner at risk, namely Colin Bell" on a date between 30 July and 2 August 2008.

Mr Bell hanged himself in the CCTV-covered "safer cell" at Maghaberry prison when he was on heightened suicide watch after repeated bouts of self harming, meaning prison officers had to check on him every 15 minutes.

Prison CCTV evidence showed that while Daniel Barclay was supposed to be monitoring Colin Bell on CCTV he was seen watching television, chatting with colleagues, and making himself a snack. At one stage - while 34-year-old Bell lay slumped dead against his Maghaberry Prison cell door - Barclay was seen on a rolled out mattress on which he was trying to nap.

The court heard that over the course of almost 90 minutes - while Bell made four suicide attempts - Officer Barclay "glanced" twice at CCTV screens showing what Bell was doing in his cell.

An investigation by then NI Prison Ombudsman Pauline McCabe¹⁷ was highly critical of many of the working practices at Northern Ireland's top security jail, including the astonishing finding that prison officers at the jail routinely made up makeshift beds and would go to sleep during night shifts. McCabe made a total of some 44 recommendations, which have since been implemented.

Among the recommendations were:

- Prison staff to be made aware of the policies relating to observation cells and self-harm and suicide prevention;
- Prison staff, including night custody officers, to be told that the use of makeshift beds is strictly forbidden;
- Televisions to be removed from all secure pod areas where staff should be monitoring prisoners.

Like the Preston Prison IMB, the Maghaberry IMB also make no mention of Daniel Barclay's conviction or sentence in any of their Annual Reports for 2013-2014, or 2014-2015. Like the death of Christopher Oldham at Preston Prison the death of Colin Bell at Maghaberry and the conviction of a prison officer in relation to serious failings at the jail in regard to it, has again been airbrushed out of existence.^{15b}

I am not suggesting that these deaths could have been avoided by night-time IMB visits, I simply do not know. But I do know this: Parliament gave IMBs the power to visit their prisons "at any time" for a reason, and how would any IMB know of these serious failings in practice, unless they exercised the powers Parliament had given to them by visiting at night to check for themselves?

There may well be practical policy problems with visiting prisons at night, and 'Tiger Kidnapping' is certainly a concern, but the solution however is to either change the law that gives IMBs the powers of entry 'at any time' or develop simple systems to challenge and overcome the threat perceived to exist; whatever course is chosen, ignoring the law, and failing to exercise these powers, is not an option.

Prison officers clearly felt confident enough to sleep because they knew the IMB rarely if ever make night visits – and seemingly, despite the shocking death of Colin Bell they still do not do so either.

Indeed the IMB web site for prisons in Northern Ireland, even today, says this: *Members play a critical role in ensuring the welfare and well-being of prisoners. They have unrestricted access to their allocated prison at any time but most duties are undertaken between 08.00 and 17.00 Monday to Friday.*¹⁸

Incidentally, the bold emphasis is theirs, not mine.

Today the IMB is a body in crisis, and internal warring factions are ripping it apart from the inside. IMBs were subject to a significant review in 2001, known as the Lloyd Review.¹⁹ This resulted in their change of name (from Boards of Visitors), the creation of a National Council and the appointment of a National President. It also recommended strengthening the support to the IMBs, through investment in its Secretariat.

The creation of a National Council has created real confusion about who represents the interests of IMB Members. In 1974 a national association of members of what were then called Boards of Visitors was established (known as

'AmBOV') and with the change of name to IMBs in 2002 this then became AMIMB – Association of Members of Independent Monitoring Boards. The relationship between the National Council and AMIMB is one fraught with tension and although there are some things that unite them, like the need for a clear strategy, there are far more things that divide them – like who represents members interests.

At present there are two voices that speak for IMBs, and they're at each other's throats.

The IMB National Council in 2014 commissioned a review of IMBs by Karen Page Associates; its conclusions were stark and its key recommendation was that to improve the efficiency and effectiveness of governance arrangements there should be an 'urgent root and branch review and reform of sponsorship, governance and leadership.' AMIMB published key notes from the Page review in July 2015 in which it set out the conclusions that the outcome of the 'urgent root and branch' review of IMBs:^{19a}

.... should be a system that protects the independence of boards within unambiguous, transparent, effective governance and leadership arrangements, clear lines of responsibility and accountability and efficient, binding decision making processes.

IMBs should collaboratively ensure there are robust systems:

- that ensure the most competent people are selected, that optimum training and development (support, mentoring, appraisal) arrangements are in place, and that people unsuited to the role of IMB members are quickly identified
- to commission, publish and promote timely reports that persuasively set out IMBs' findings and recommendations, and that support timely, outcome-focused and collaborative attention by IMBs and government working together on key issues identified by IMBs
- that enhance support to boards... there should be a single source of information (eg on a website) for boards about internal policies, standards and processes.

Detailed comments included:

- widespread dissatisfaction with current arrangements beyond local level
- frustration about what were seen as dysfunctional systemic relationships between, variously, boards, chairs, President, National Council, Secretariat and AMIMB
- the IMB system was regarded by many as endemically flawed and a drag on IMBs being able to create and sustain the reputation and authority to effectively champion the proper treatment of prisoners and detainees
- internal systemic problems could become a substitute for focusing on the welfare of people in custody or detention
- waste of talent within the IMB system as committed and able members and Secretariat staff laboured to make awkward arrangements work
- the IMB system was struggling to be fit for purpose

and that this created significant obstacles for members, boards and Secretariat

- the Secretariat's culture as a government unit trained to apply rules unquestioningly versus IMBs' ethos as independent and challenging seemed to be factors in this, at times, unsatisfactory relationship.

In September 2015 AMIMB wrote an open letter to John Thornhill, the IMB National Council President, who is not incidentally a Member of any IMB, in which they voiced their frustrations at a lack of progress after the Page Review.^{19b}

The AMIMB executive committee respectfully request, on behalf of all IMB members, that the National Council publish to the membership its Development Plan and any other strategically-significant documents that you are working on that respond to the observations made in the Karen Page Associates review... without delay, in whatever form they currently take. The membership need to see these documents in draft in order to be able to comment upon them, and thereby 'own' them. ...AMIMB believes that IMBs are under serious threat, and is not impressed.

It feels that the National Council lacks both urgency and the readiness to make preparations of an appropriate kind. Something substantially more is needed than a development plan and a monitoring framework, neither of which is remotely strategic, but which would both find a niche as appendices to the implementation part of a strategy document. So we set out... a challenge to the NC to dig deep into its reserves and its vision for the organisation's future by writing a strategy.

Furthermore we urge the NC to do this fully collaboratively with the membership, something the council seems to find difficult to do.^{19b}

By November 2015 things between the two factions had not improved and the AMIMB executive committee consulted its membership on three important questions:

- Should AMIMB speak out publicly?;
- About which matters?;
- And subject to what process?

The overwhelming answer was that AMIMB should speak out, and join forces with other voices, on important matters. Respondents did not wish to limit the issues AMIMB might comment on, or where, but it was important, they felt, that any views expressed should be based on evidence. That is of course also the view of the executive committee.^{19c}

After the 2015 annual conference of the AMIMB the leader article in *The Monitor* (November 2015), their tri-annual publication, described how at the Conference there had been positive discussions on the subject of reform of IMBs governance advanced by the AMIMB Executive Committee that laid bare they wanted nothing to do with a National Council nor its President:

Members focused positively on putting flesh on the skeleton the executive committee presented. At its heart was a proposed new structure for IMBs nationally. Instead of the widely criticised current governance system, monitoring would be run

by a proper main board, of IMB members chosen for their capabilities and outsiders chosen for their expertise, with an external chair.

The board would relate directly to the MoJ, with statutory safeguards for its independence and right to speak out. It would be underpinned by a chief executive and staff capable of supporting the monitoring function as well as providing administration tailored to a volunteer organisation and its governance.

*So no National Council, no President and a professionalised Secretariat.*²⁰

The two sides seem as far apart as ever.

The AMIMB web site today records that in 2012, without reason or notice the National Council suddenly decided to 'suspend its current arrangements for liaising with AMIMB'^{20a} and now no longer speaks to them. The National Council claim that this isn't true, John Thornhill told me personally that he had attended meetings with AMIMB, but wherever the truth resides, and its impossible to get to the bottom of it, this unhealthy public, in-fighting ill-serves everyone.

If as AMIMB insist their members overwhelmingly wanted them to 'speak out' why I wondered do I never hear AMIMB or IMB Members speaking in the media, appearing on the radio or TV, perhaps when an inmate had died or serious concerns they raised were being ignored?

One IMB Member told me quite candidly that she "would not be on the Board very long if I did that, they don't like people who rock the boat."

When I asked who 'they' were, I was told "The Secretariat and National Council".²¹

The reality, nationally, is that IMB Members are often the first to trumpet their 'independence', yet they are also the last to truly put that independence into practice.

Every IMB is a separate legal entity, working within the IMB Framework Agreement with the MOJ, but it is responsible for its own actions, or inactions.

This is now 2016, every IMB should have its own web site, but not even the National Council has one of those. Boards should appoint a Press Officer, Members should be encouraged not condemned for speaking out publically, whether in praise or criticism; what on earth do IMB Members think 'independent' actually means?

And could speaking out make a difference, and do IMB Members even recognise abuse or danger when they see it?

In his excellent 2016 book "Competition for Prisons: Public or Private"²² the former Finance Director of HM Prison Service, Julian Le Vay, examines four prisons which got into very serious problems, two public and two private: Brixton, Wormwood Scrubs, Ashfield and Rye Hill.

HMP BRIXTON

At Brixton prison in 2000 the Chief Inspector made a

surprise inspection and found conditions so appalling that he immediately rang the Director General, Martin Narey, and asked him to come. The Chief Inspector (Sir David Ramsbotham) described the healthcare centre as 'without a doubt the worst patient accommodation we had ever seen anywhere', where 'filth and neglect appeared to have been tolerated by management for so long'. The kitchen was fit to be condemned (and seemingly had been). Staff had developed a practice of solitary confinement of prisoners thought to be badly behaved – without any legal authority. Records had been systematically doctored. Constructive activities for prisoners were almost non-existent.²³

WORMWOOD SCRUBS

At Wormwood Scrubs prison in March 1998 a firm of solicitors called Hickman and Rose, produced a dossier of allegations of gross and repeated brutality at the prison, sometimes amounting to torture, and with a racist element, going back many years, and centring on the segregation unit. This pattern of organised, extreme violence against prisoners over many years was, it would appear, extremely rare, if not unique, in modern Britain. Terrible violence had sometimes been done, as with the beating to death of Barry Prosser in the hospital of Birmingham Prison in 1980, but nothing this sustained, one might say institutionalised.

It was an appalling example of all possible dogs not barking in the night – area manager, Inspectorate, police. (It should be said that the Board of Visitors had expressed concern in its 1998 report, but no notice had been taken: such is often the case with these bodies, nowadays titled Independent Monitoring Boards).

A series of police investigations led to 27 officers being charged, prompting a mass 'sickie' in April 1998, as a way of getting round the legal ban on striking. Six officers were convicted (but three were acquitted on appeal). Several million was paid out in compensation to prisoners.²⁴

HMP RYE HILL

When Rye Hill was inspected for the first time in 2003, it was described as 'in many ways an example to most public sector prisons', with most prisoners out of their cells most of the day, and a respectful and positive atmosphere. But, the Chief Inspector went on, 'as we have reported in relation to other contracted sector prisons, this open and relaxed approach can carry risks'. There were too few officers; they were too inexperienced; they were failing to set appropriate boundaries when challenged by prisoners. Prisoners were frustrated because staff did not know enough to deal with their problems or answer their queries.

Further inspection in April 2005 was far more alarming.

The prison had deteriorated and was now 'an unsafe and unstable environment, both for staff and prisoners'. A third of staff had been there less than six months. They were not in control. Two inexperienced officers – or even just one – were faced with a wing of 70 prisoners unlocked most of the time. Staff were being bullied, threatened and intimidated, and reacted by withdrawing when challenged.

Managers were not visible and not supportive.

There had been a hostage incident immediately before inspection, concerted indiscipline and a rise in assaults and drug use – and a murder during inspection. In March 2005 a prisoner died in the segregation unit in circumstances that led to four officers being charged with manslaughter by gross negligence and conspiracy to pervert the course of justice (all were cleared, on the judge's direction).²⁵

ASHFIELD

Ashfield had a complicated contractual relationship with both HMPS, which held the 25 year PFI contract, and the YJB, which were 'commissioners' for the juvenile offenders there and who paid HMPS for the service. In 2001 it began at short notice to take sentenced young offenders, making the place significantly more difficult to run.

Intervention this time came from the Director General of HMPS, Martin Narey, who after an unannounced visit in May 2002 was "greatly concerned" about the environment and considered the place unsafe.

Wheatley, visiting a few months later, reports seeing staff trying to keep two warring groups of prisoners apart, being ignored and then just giving up. He found "staff were uncertain of who to unlock, for what and in what order". Sensing their lack of confidence, young prisoners were extremely challenging and "in your face" (Wheatley, private communication).

Inspecting in July the same year, the Chief Inspector, Anne Owers, came to the same conclusion: 'this report probably the most depressing I have issued in my time as chief inspector'. The report described 'an establishment that was failing, by some margin, to provide a safe and decent environment for children'.

The Chief Inspector again asked how it was possible for a prison to get into such a state, despite all the monitoring that went on.²⁶

How indeed?

Each of these prisons had an IMB and all of them (including Wormwood Scrubs who 'expressed concern' and then did nothing when it was ignored) failed to speak out.

IMBs in these prisons either did not recognise the abuses or dangers when they saw them, or they were complicit in them – there is no other possible alternative and, complicit or incompetent, in either case they are unfit for purpose.

The Board or Secretariat may not like a Member who 'rocks the boat' but the fact is that a tame Monitor is actually a very real danger to the prison and the public – who needs a watchdog that never barks, much less one that conceals critical criminal events that cost lives?

Julian Le Vay says: "Independent Monitoring Boards (IMBs), statutory bodies staffed by volunteers charged with monitoring the welfare of prisoners, have never seemed very credible as a safeguard against abuse. Neither local nor national management tend to pay them much attention (Justice Committee, 2015); and they played little part in relation to the 'Four prisons in trouble'."²⁷

One judge famously referred to IMBs

as “watchdogs of the public interest”²⁸ but closed, secretive, unnamed and unreformed, and concealing critical criminal conduct involving inmate deaths, they are pointless; and at two million pounds a year, a luxury we need not afford. Viewed, as they are from many quarters, with derision and distrust, it is a body unfit for purpose and made unnecessary by other more transparent and respected bodies.

There is however still a point to them, just. But for how long?

IMBs must now as an organisation reform themselves. They should start by making each Board publish the names of its Members, by creating a Press Officer who speaks up and out in the name of independence, by creating a rota of frequent unannounced night visits, and in my view having a membership vote on whether to abolish what appears to be a discredited National Council; an organisation as important as IMBs cannot be represented by two warring factions and its needs to speak with one voice.

They must be opened up to scrutiny themselves, so that the shocking concealment from the Secretary of State and the public in their annual reports of criminal conduct by staff relating to losses of life can never happen again.

The IMBs at Preston and Maghaberry should be immediately and completely replaced from top to bottom.

If they fail to reform themselves then it is perfectly legitimate to ask whether their failure to reform should result in their complete abolition, as I believe firmly that it should in that event – but also desperately hope that it won’t.

One former very senior member of the National Offender Management Service told me in a private communication that IMBs were “...mainly, of course, supine. One reason for that is that they’re not paid and one option would be to retain the concept of local community inspection (which I quite like), have fewer such individuals, encourage ex offenders to apply but pay them a bit for their time.”²⁹

The lack of IMB remuneration needs to be addressed, they deserve to be paid for the important role they do, but equally in the current economic climate I am realistic enough to accept that this is unlikely.

Successful ex-offenders, a decade after their release, and former members of prison staff should also be recruited to IMBs, their knowledge and experience would play a vital part in improving effectiveness.

There are two elephants in the IMB room; the Prisons Inspectorate and Prisons and Probation Ombudsman. Both were created long after IMBs came into existence, largely as a result of IMB failures to speak up and out, and assert its independence. These bodies now primarily discharge functions that to a large extent make the IMB role superfluous. We have seen a fundamental IMB change in Scotland, we have to face facts and ask whether that is appropriate in

England and Wales too.

Following the Kate Page Review into the Governance of IMBs the Ministry of Justice is currently undertaking an IMB Governance Review, with various models being advanced and into which I am delighted to have been invited to play a part. The future may not therefore be as bleak as the past; I hope so for everyone’s sake.

Is the public getting value for its two million pounds a year from this currently closed, secretive, ineffective watchdog?

Not from where I am standing.

Will they reform?

Time will tell – talking of which as I write this, on 27th March 2016, the clocks have just gone forward an hour. In my view the IMB need to move their clocks forward fifty years, if they are to survive for very much longer.

Mark Leech FRSA,

Editor: *The Prisons Handbook*

27th March 2016, Chiang Mai, Thailand

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