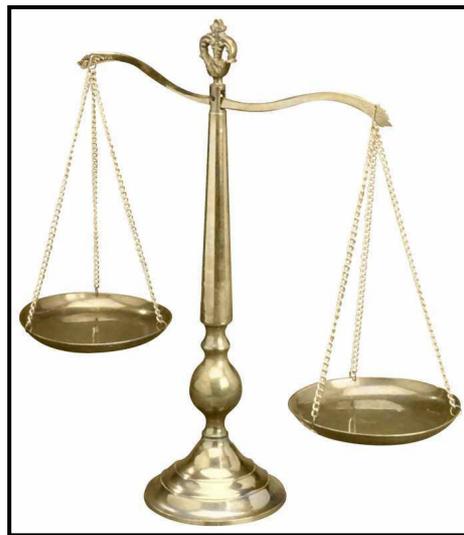


States of Jersey
States Assembly



États de Jersey
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Education and Home Affairs Scrutiny Panel



Prison Board of Visitors

Presented to the States on 18th August 2009

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Chairman's Foreword

HMP La Moye has been very much in the media and political spotlight in recent years, with two somewhat critical reports following visits in 2001 and 2005 from HM Inspector of Prisons. Both reports made recommendations for improvements to the prison, some of which have already been implemented and others which are 'still pending'. Our report has not been concerned so much with the internal workings or the physical conditions of the prison, but has been limited to the relatively narrow area of the Board of Visitors, and even more specifically, the composition of that Board.

To a layperson, the title Board of Visitors is often misleading, conjuring up images of friends or family members visiting their incarcerated friends and relatives each month, separated by glass screens. In fact, the board of visitors is the body which is responsible for ensuring the welfare of prisoners and that due process is being observed in the prison. Put simply, the Board of Visitors acts as a type of monitoring board for the prison. This function is reflected in the (less misleading) name of the UK equivalent, which, in 2002, changed its name from Board of Visitors to Independent Monitoring Board (IMB). However, it would be wrong to think that the only difference between the Jersey system and the UK (or more specifically the system operating in England and Wales) is simply one of nomenclature; there are fundamental differences, many of which are highlighted in this report. The most pressing difference -and one which concerned the Sub-Panel was the possibility of conflict of interest given the dual role of the seven Jurats who both serve on the board and, in their primary function, in the Royal Court. This was indeed the assertion of Mr Pittman, a Jersey resident and former member of an IMB in the UK, who brought the matter to the attention of the Panel. It was also noted that whereas the Jurats themselves could be said to be selected from a broad cross-section of society, currently members of the Jersey Board of Visitors are not - only Jurats can serve on the board. The Sub-Panel was, therefore, also keen to investigate the composition of the board on this basis, as it seemed that this state of affairs unfairly precluded other suitable members of society being able to volunteer for this function.

During its investigations, the Sub-Panel consulted a wide range of witnesses, including current prisoners. It visited HMP La Moye, in Jersey well as an Independent Monitoring Board (IMB) in England, that of HMP Winchester.

Following on from the Call for Evidence, there were three formal submissions, all from individuals with an inside knowledge of such systems. Public hearings were also held with the Minister, the Governor, the Jurats and one of the three witnesses, Mr Pittmann, a local resident who had previously served on an IMB in the UK.

The Sub-Panel also sought independent legal advice from an experienced and prominent UK QC on the issue of human rights. As a result of this review and its findings, a certain number and recommendations have been presented in this document. It is the hope of the Sub-Panel that these recommendations are taken seriously and acted upon swiftly.

On behalf of the Sub-Panel, I would like to thank all those who gave evidence and made submissions to the Sub-Panel, whether in written form or orally during the sessions. We have been particularly grateful for their co-operation and professionalism during the review.



Deputy Montfort Tadier

1. Introduction

- 1.1 Concerns regarding the Prison Board of Visitors were raised with the previous Education and Home Affairs Scrutiny Panel by Mr R. Pittman. As a result, the previous Panel made a recommendation in its legacy report that strong consideration should be given to the inclusion of a review relating to the Board of Visitors within the Panel's 2009 work programme.
- 1.2 Mr Pittman's concerns regarding the Board of Visitors centred on the current constitution of the Board, which consists of Jurats of the Royal Court, and the concern that this link with the Island's judiciary prevented the Board from being entirely independent. Having sat on an Independent Monitoring Board in the UK, the equivalent to the Island's Board of Visitors, Mr Pittman also raised several concerns regarding the current workings of the Board.
- 1.3 At its Panel meeting on the 11th February 2009 the Panel therefore agreed it wished to form a Sub-Panel, chaired by Deputy M. Tadier, to review this issue.
- 1.4 The Sub-Panel's review highlighted a number of issues regarding the current workings of the Board of Visitors that would benefit from improvements, including clarification of the role of the Board and its main responsibilities; the introduction of unannounced visits by the Board and the need to increase training requirements for members of the Board. The Sub-Panel has accordingly made a number of recommendations with regard to the protocols and procedures of the Board of Visitors.
- 1.5 Furthermore, the Sub-Panel has ultimately recommended that the Board of Visitors should no longer consist entirely of Jurats of the Royal Court. The Sub-Panel is of the opinion that whilst the Jurats genuinely believe themselves to not be conflicted, by the very nature of their primary role within the judiciary their position is simply unsustainable. It is vital for the Board of Visitors to not only be independent, but to be seen as being independent, especially from the perspective of the prisoners. The current constitution of the Board precludes this, with the link between the Board of Visitors and the Jurats being impossible to ignore.
- 1.6 The Sub-Panel also noted that the present situation which permits only Jurats from taking up a position on the Board of Visitors was also unsatisfactory on the grounds that other members of society, with the requisite skills for being on such a body, would not be able to serve on it if they were not a Jurat. The Island therefore needs

to be moving away from the dual role of the Jurats, and enabling independent members to sit on the Board of Visitors.

- 1.6 This recommendation is further supported by legal advice received by the Sub-Panel which concludes that the multiple functions of the Board of Visitors are not compatible with Jersey's international human rights obligations, or the Human Rights (Jersey) Law 2000. The legal advice received similarly recommends that the monitoring and complaints function of the Board should be opened up to individuals other than Jurats.

2. Key findings and recommendations

Key findings

2.1 The Sub-Panel was concerned by the lack of detail outlining the role and responsibilities of the Board of Visitors. It was believed that especially where new members are concerned, it would be important to have a detailed brief outlining the Board's main functions.

2.2 An independent monitoring body, such as the Board of Visitors, needs to not only be independent, but to be seen as being independent. A vital component of the perceived independence of Independent Monitoring Boards comes from rota visits to the prisons being unannounced. By the Board of Visitors announcing all of its visits this practice is potentially open to manipulation. This practice further means that the Board may not be seeing the prison on a 'typical day', and instead, always be seeing it 'at its best'.

Furthermore, the independence of the Board of Visitors should extend to the methods used by prisoners when requesting to meet the Board. In line with the system used by IMBs in England and Wales, this independence would be enhanced if prisoners were able to request to meet the Board by placing a request form in a dedicated box on their prison wing.

2.3 The Sub-Panel acknowledges the reasoning behind officers accompanying a member of the Board around the prison, and thereby being able to assist, and answer prisoners' queries. The Sub-Panel further fully supports the need to ensure the safety of the Board of Visitor Members. However the practice of escorted visits detracts from the ability for the Board to be independent and remain autonomous.

2.4 The Sub-Panel notes that the Board of Visitors claims to respond to the issues raised by prisoners quickly and efficiently, however there were concerns raised by prisoners (see section 8) in terms of the length of time it takes for the Board of Visitors to respond to their queries. The Sub-Panel acknowledges that this may be partially as a result of the Board not always being able to meet prisoners' expectations regarding what the Board is able to achieve.

2.5 The attendance of members of an Independent Monitoring Board at serious incidents provides a safeguard for the interests of both prisoners and staff, and leads to an independent account being available should any issues arise following the incident. The Sub-Panel views the lack of standardisation regarding the attendance of a Board member at serious incidents as a failing of the current system. A Board member

should be present as soon as possible, so as to protect the welfare and interests of both prisoners and staff alike.

- 2.6 Whilst the Sub-Panel fully supports the view that any problems should first be addressed through the Governor, followed by the Minister for Home Affairs if necessary, the Sub-Panel is nevertheless concerned that, as suggested by the Minister himself, the nature of the Jurat's role may reduce the likelihood that Board members would make their concerns public.
- 2.7 The Sub-Panel views the quarterly meetings with the Minister for Home Affairs, the Chief Officer of Home Affairs, and the Prison Governor as a wholly positive initiative by the Board of Visitors, and supports it fully.
- 2.8 It is quite clear to the Sub-Panel that training is a vital element in ensuring members of the Board are able to fulfil their roles appropriately, especially with regard to induction training for any new members of the Board.
- 2.9 The current situation precludes individuals that are not Jurats from becoming a member of the Board of Visitors, and there may be individuals within the Island that are very keen to join a similar body, but are currently prevented from doing so.

The Sub-Panel is of the opinion that whilst the Jurats genuinely believe themselves to not be conflicted, by the nature of their primary role within the judiciary this argument is simply unsustainable. It is vital for the Board of Visitors to not only be independent, but to be seen as being independent, especially from the perspective of the prisoners. The current constitution of the Board precludes this, with the link between the Board of Visitors and the Jurats being impossible to ignore. The Island therefore needs to be moving away from the dual role of the Jurats.

- 2.10 The Sub-Panel recognises that, as a result of their main function within the judiciary, Jurats are well placed to gain access to a lawyer on a prisoner's behalf. However, the Sub-Panel questions whether it is the role of the Jurats to assist prisoners with legal queries in this way. This is certainly not something that falls within the remit of IMBs and it is considered that this function is supplementary to the Board's main role.

Moreover, the Sub-Panel is of the opinion that even if this function were legitimate, this level of relationship between Board members and lawyers could be built up over time by an appropriately skilled independent member of the public. If the Board of Visitors do require, and have special access to lawyers, this should be by virtue of their position as members of the Board of Visitors, and not by the contacts they have developed indirectly through their work in the Royal Court.

- 2.11 The Sub-Panel believes that there is a lack of clarity surrounding the role of the Board of Visitors in Jersey, which would benefit from investigation by the Minister for Home Affairs. For example, whether it simply has a monitoring role, whether the Board should be involved with appeals, and whether members should be initiating contact with the prisoners' lawyers.
- 2.12 The Sub-Panel acknowledges that there may be both positive and negative implications of a Jurat who has been involved in a prisoner's case later coming into contact with that prisoner in their role as a member of the Board of Visitors. However, as demonstrated by the comments received from the prisoners during their meetings with the Sub-Panel (see Section 8); it is evident that the prisoners are not happy with this situation. With a fully independent Board of Visitors, this situation simply would not occur.
- 2.13 The Sub-Panel notes that the Minister for Home Affairs and the Jurats sitting on the Board of Visitors did not consider that the current constitution of the Board affected its independence, however the comments received from the prisoners that had met with the Board cannot be ignored.

The comments received indicate that the dual role of the Jurats is seen as a negative element. Significant concern was raised about a number of different, though inter-related issues: Board of Visitor members being judgemental as a result of having already found someone guilty of a crime; the clear lack of demonstrable independence; and from the young offenders, the belief that it would be easier for them to identify with members of the Board if it consisted of younger members.

These comments support the notion that the current constitution of the Board prevents it from fulfilling its function as an independent monitoring body, and support the Sub-Panel's recommendation for the constitution of the Board to therefore be addressed by the Minister for Home Affairs, and to ultimately include independent members.

- 2.14 Based on the legal advice received from Mr Cooper, the Sub-Panel is concerned that the multiple functions of the Board of Visitors are not compatible with Jersey's international human rights obligations or the Human Rights (Jersey) Law 2000. It is not satisfactory that, as a result of the perceived or actual conflicts of interest within the Board of Visitors, the Board is less effective in monitoring the prison and carrying out its vital role in preventing ill treatment within the prison.
- 2.15 The Sub-Panel recognises the reasons behind the Island not wishing to be signed up to OPCAT. However, it is considered that as the Island has confirmed its support for

the principles behind the Convention, should the Board of Visitors be reconstituted, it should be with a view to complying with the principles of OPCAT.

Recommendations

- 2.16 The Minister for Home Affairs should consider introducing a detailed handbook for members of the Board of Visitors, clearly outlining its role, responsibilities and main functions, in order to avoid any confusion surrounding the remit of the Board.
- 2.17 The Sub-Panel recognises the potential benefits of both announced and unannounced visits. It therefore strongly recommends that, irrespective of the future constitution of the Board of Visitors, unannounced visits need to be made to the Prison to lead to a greater level of perceived autonomy. This, however, does not need to stop the practice of the Board also making announced visits, if it is believed that this system is of benefit to the prisoners. The success of the introduction of unannounced visits should then be monitored and reviewed by the Minister for Home Affairs after one year.
- 2.18 The Sub-Panel recommends that HMP La Moye should introduce dedicated Board of Visitors boxes to each wing of the prison, to enable prisoners to make a request to see the Board whenever they wish to do so. These boxes should then be emptied by a member of the Board of Visitors on a weekly basis.
- 2.19 Part of the training for new members of the Board should include key training members to enable them to make unaccompanied visits around the prison. This training process should also include training for members in terms of security procedures and protocols, to ensure members are adequately informed of the methods necessary to protect their personal safety. The Sub-Panel recommends that all members of the Board should receive this training, with the result that Board members then feel comfortable undertaking unescorted visits around the prison. The Sub-Panel believes that this is essential to enhance the independence and the autonomy of the Board, and to bring it in line with long established practices in the UK.
- 2.20 The Sub-Panel recommends that all prisoners' queries should be recorded and if possible, discussed with the relevant prison staff on the same day. All queries should be responded to within the period of one week. This will ensure that even if the Board are unable to deal with a specific issue raised by a prisoner, the prisoner still receives a response confirming this. If a particular query is taking a long time to resolve, prisoners should receive regular updates.
- 2.21 The Sub-Panel strongly recommends that a member of the Board of Visitors should be called to the prison at the earliest possible opportunity during a serious incident,

- and should follow the procedure adopted by Independent Monitoring Boards. The Board member's role would be to act as an independent monitor able to deliver a fully independent assessment of what was taking place. There should be a further requirement for that member to file a report of the incident within 24 hours of their attendance.
- 2.22 The Sub-Panel recommends that all meetings with the Minister for Home Affairs, the Chief Officer of Home Affairs, and the Prison Governor must be fully minuted and recorded.
- 2.23 The Board of Visitors should investigate the possibility of members attending Independent Monitoring Board training courses in the UK. An induction period should also be introduced for new members of the Board, to include key training and security training.
- 2.24 The Minister for Home Affairs should implement a new system, enabling independent members of the public to sit on the Board of Visitors. However as with the UK system where there is nothing preventing a magistrate from sitting on an IMB, there should be nothing preventing a Jurat from sitting on the Board of Visitors. This would allow the Board of Visitors to draw on a wider pool of people.
- 2.25 The ease with which the Jurats are able to access the prisoners' lawyers should not feature in the decision as to whether the Board of Visitors should include independent members of the public. If there are issues with lawyers not responding to prisoners' contact this is a systemic failure which needs to be resolved without having to rely on the Jurats to contact them on their behalf.
- 2.26 The Minister for Home Affairs should initiate a full review of what the role of the Board of Visitors should be in Jersey, to be completed within the next six months with a report then being brought to the States.
- 2.27 The legal advice received from Mr Cooper further supports the Sub-Panel's previous recommendation that membership of the Board of Visitors should not be limited to Jurats.
- 2.28 The Sub-Panel recommends that the Minister for Home Affairs should fully consider the principles and the requirements of the OPCAT when considering any future reconstitution of the Board of Visitors. As the OPCAT extends to all places of detention the Sub-Panel further recommends that the Minister should additionally consider the potential benefits of an over-arching body being formed that would cover all places. The Panel believes this to be particularly relevant in the current context of there being no unannounced visits made by the Board of Visitors.

2.29 The Sub-Panel further recommends that the Minister for Home Affairs should consider inviting international experts to the Island, to discuss the most effective mechanisms for prison monitoring in the context of a small Island community. Such individuals could include the Committee of the European Convention for the Prevention of Torture or Inhuman and Degrading Treatment or Punishment (CPT) or the UN Special Rapporteur on Torture.

3. The role of the Prison Board of Visitors

- 3.1 The Board of Visitors is established by the Prison (Jersey) Law 1957¹, which outlines that the States shall make Regulations providing for the constitution of the Board of Visitors, consisting of Jurats of the Royal Court, appointed by the Superior Number of the Royal Court.
- 3.2 Additionally, the Prison (Jersey) Rules 2007² allow prisoners to appeal to the Chairman of the Board of Visitors against a breach of discipline.
- 3.3 The role and responsibilities of the Board of Visitors are prescribed by the Prison (Board of Visitors) (Jersey) Regulations 1957.³ As outlined by the Regulations, the Board of Visitors consists of no less than 7 Jurats of the Royal Court.
- 3.4 During his attendance at a Public Hearing, the Panel asked Mr B. Millar, Governor, HMP La Moye, to summarise the role and responsibilities of the Board of Visitors. He explained:

“They actually support the Governor and the establishment in terms of ensuring that we make good use of public funds, so we run the place efficiently; to be available and accessible to prisoners; to make sure that there are no abuses of any description and that prisoners are actually being fairly and justly managed; to inform the Minister if they do identify any abuses of the system.”⁴

- 3.5 In comparison to Independent Monitoring Boards (IMBs) in England, the Regulations outlining the role and responsibilities of the Board of Visitors are very brief. IMBs have access to a detailed reference book, which is designed to provide IMB members with information and key references to help them carry out their duties effectively and to develop a clear understanding of their role at their individual establishments. IMB members are also provided with an IMB Pocketbook, which contains memory joggers and key tasks for members while on visits.⁵

¹ Article 6

² Rule 94

³ From this point forward ‘Regulations’ means the ‘Prison (Board of Visitors) (Jersey) Regulations 1957

⁴ Transcript of Public Hearing, 26h March 2009, p.17

⁵ Accessed from <http://www.imb.gov.uk/members-information1.html/reference-books/> on 14th May 2009

KEY FINDING

3.6 The Sub-Panel was concerned by the lack of detail outlining the role and responsibilities of the Board of Visitors. It was believed that especially where new members are concerned, it would be important to have a detailed brief outlining the Board's main functions.

RECOMMENDATION

3.7 The Minister for Home Affairs should consider introducing a detailed handbook for members of the Board of Visitors, clearly outlining its role, responsibilities and main functions, in order to avoid any confusion surrounding the remit of the Board.

4. Responsibilities of the Prison Board of Visitors

Visits and meetings of the Board of Visitors

- 4.1 In terms of how prisoners are made aware of the role of the Board of Visitors, and of how they would arrange to meet with the Board, Mr B Millar, Governor, HMP La Moye, explained to the Sub-Panel that this is covered during prisoners' inductions, where they are advised of the Board's role, and on how to action any complaints or requests:

*"They are actually given that advice in writing. They are advised about it, and it is in their induction booklets about the, you know, proper sorts of referral."*⁶

- 4.2 The Regulations state that *"Members of the Board of Visitors shall pay frequent visits to the prison and at least one member of the Board shall visit the prison once between each meeting of the Board."*⁷ The regulations require the Board to meet at the prison once a month to discharge its functions under the Regulations, and outlines that the Board should not meet less than 8 times in 12 months.⁸ With reference to this, Jurat Tibbo, Chairman of the Prison Board of Visitors, made the following statement:

*"The regulations stipulate that we only need to visit 8 times a year. We visit 12 times a year and in between that a Jurat or a member of the board visits in between those regular visits."*⁹

- 4.3 Jurat Tibbo further explained that in addition to scheduled visits to the prison, members of the Board respond to individual requests from prisoners:

"But in addition to all that, members will respond to any request of any prisoner. Only recently one of the board members went out of his way to try to collect the belongings at a prisoner's former flat when he was arrested without prior notice."

- 4.4 However, Mr Pittman did not believe this was sufficient in comparison to IMBs in England. The IMB Reference Book outlines the frequency of visits by IMBs and prescribes that, as with the Jersey system, at least one of its members visits the establishment between its monthly meetings. However, the reference book goes on to explain that the model constitution for Boards lays down weekly visits to the

⁶ Transcript of Public Hearing, 26th March 2009, p.8

⁷ Regulation 5

⁸ Regulation 6

⁹ Transcript of Public Hearing, 2nd April 2009, p.5

establishment,¹⁰ and the members of the IMB for HMP Winchester explained to the Sub-Panel that a Board member visits that specific establishment weekly.

- 4.5 In the HM Chief Inspector of Prisons Report on an announced inspection of La Moye, dated 27th June – 1st July 2005, the following recommendation was made:

“6.53 Statutory visitors should visit all prisoners in segregated conditions each day, and these visits should be recorded. A member of the board of visitors should visit at least once a week.”

- 4.6 One of the issues the Panel was keen to consider was whether the Board of Visitors made unannounced visits to HMP La Moye. A submission from Mr R. Pittman made the following statement regarding the arrangements for the Board of Visitors' visits to the prison:

“IMB (Independent Monitoring Board)¹¹ members are on rotas requiring at least weekly unannounced visits to the prison, by a member of the Board, with the visit properly written up and discussed at the Board's monthly meetings (with the governor present). My understanding is that such unannounced and unaccompanied visits round La Moye by members of the BoV do not currently take place.”

- 4.7 The arrangements for the Board of Visitors' visits were discussed during the Public Hearing with the Governor from HMP La Moye, where Mr Millar made the following statement:

“No, they do not make unannounced visits. They tend ... the monthly meeting is scheduled so they will always come on that date, and one of the members will visit between the monthly visits and they will generally contact us in advance to tell us they are coming. There are practical reasons for that as well because they want to be met by an officer escort and be taken round the establishment without, you know, too much delay and so on. But it is also to signal so that we can signal to prisoners that they are in the establishment and they will see prisoners while they are in the establishment.”¹²

- 4.8 Mr Millar went on to discuss the system of visiting committees in Scotland, which are the equivalent of the Island's Board of Visitors, and explained that in Scotland visits similarly tended to be announced:

¹⁰ IMB Reference Book Section 32: <http://www.imb.gov.uk/members-information1.html/reference-books/>

¹¹ In England and Wales, every prison has its own Independent Monitoring Board (IMB). IMBs are considered to be the prisons' independent watchdogs, and the members sitting on these Boards are drawn from the local community.

¹² Transcript of Public Hearing, 26th March 2009, p.30

“Visiting committees in Scotland tended not to make unannounced visits. It was a very similar process. England is slightly different and it varies.”¹³

4.9 During the Public Hearing with the Minister for Home Affairs, the Minister asked Mr Millar if there would be any objection or difficulty with the prospect of members of the Board of Visitors making unannounced visits to the prison. Mr Millar explained that this would not cause him any concern, and the only problems would be for the individual Board members themselves, in allowing them immediate access depending on what was happening in the establishment at the time.¹⁴

4.10 The possibility of the Board of Visitors conducting unannounced visits was discussed with representatives from the Board of Visitors during the Public Hearing, where Jurat Clapham explained that the Governor would be perfectly happy for members of the Board to turn up at the prison unannounced. Jurat Clapham further explained that although the Board members' visits to the prison were pre-arranged, the actual areas the members would request to visit whilst they were at the prison were not arranged in advance:

“So, even if none of the women have asked to see us, we would say: “Can you take me to the women’s wing now? Can you show me the gym?” or whatever. They do not know what we are going to ask and we do that.”¹⁵

4.11 Jurat Clapham went on to explain that she would be sorry for the system to change to unarranged visits being made by Board members, as it was believed that with IMB members turning up unannounced, they may miss prisoners that were wanting to speak to them, because they could be at work. Whereas Jurat Clapham explained that with the system currently operating in Jersey, the officers go round every wing, meaning that theoretically every prisoner is given a notice that a Board member will be present the next day, and asked whether they wished to meet with a member of the Board. Jurat Clapham also explained that there were other benefits arising from the prisoners being given notice of the Board members' visit:

“So there might be a list of 10 people who will wait to see us, not just one young chap we find in the corner, which would happen possibly when you are wandering around because they have got time... to find their papers, to check with their lawyers, to work out what it is they want to talk to us about, check whether they have

¹³ Transcript of Public Hearing, 26th March 2009, p.31

¹⁴ Transcript of Public Hearing, 26th March 2009, p.35

¹⁵ Transcript of Public Hearing, 2nd April 2009, p.16

*got a dentist appointment or a doctor's appointment. They can collect their thoughts and come to see us.*¹⁶

- 4.12 The arrangements for the Board of Visitors' visits to the prison were discussed with representatives from HMP Winchester's IMB, who explained that the Board cannot be seen as independent if they only make announced visits. They elaborated that in theory if only announced visits are made; the prison is able to protect itself. They accepted that in practice, it might not make any difference, however the Board needs to be **seen** to be independent, as well as **being** independent.

KEY FINDING

- 4.13 An independent monitoring body, such as the Board of Visitors, needs to not only be independent, but to be seen as being independent. A vital component of the perceived independence of Independent Monitoring Boards comes from rota visits to the prisons being unannounced. By the Board of Visitors announcing all of its visits this practice is potentially open to manipulation. This practice further means that the Board may not be seeing the prison on a 'typical day', and instead, always be seeing it 'at its best'.**

Furthermore, the independence of the Board of Visitors should extend to the methods used by prisoners when requesting to meet with the Board. In line with the system used by IMBs in England and Wales, this independence would be enhanced if prisoners were able to request to meet with the Board by placing a request form in a dedicated box on their prison wing.

¹⁶ Transcript of Public Hearing, 2nd April 2009, p.17

RECOMMENDATION

4.14 The Sub-Panel recognises the potential benefits of both announced and unannounced visits. It therefore strongly recommends that, irrespective of the future constitution of the Board of Visitors, unannounced visits need to be made to the Prison to lead to a greater level of perceived autonomy. This however does not need to stop the practice of the Board also making announced visits, if it is believed that this system is of benefit to the prisoners. The success of the introduction of unannounced visits should then be monitored and reviewed by the Minister for Home Affairs after one year.

The Sub-Panel recommends that HMP La Moye should introduce dedicated Board of Visitors boxes to each wing of the prison, to enable prisoners to make a request to see the Board whenever they wish to do so. These boxes should then be emptied by a member of the Board of Visitors on a weekly basis.

4.15 A further issue that was discussed during the course of the Sub-Panel's review was whether Board members were escorted by an officer during their visits to the prison. It was explained to the Panel during the Public Hearing with representatives from the Board of Visitors that Board members are escorted by an officer during their visits to the prison.¹⁷ However, this was an arrangement that was criticised by Mr Pittman, who did not believe it was appropriate for an independent monitor of the prison to be accompanied around the prison by a member of staff.¹⁸

4.16 The importance placed on IMB member visits being unaccompanied and unannounced is highlighted in the IMB Reference Book, which referring to the Board's weekly rota visits, states:

"Whenever possible, rota visits should be unannounced and, to safeguard their independence, Board members should not be escorted by staff."¹⁹

4.17 Similarly, Mr Pittman explained the benefit of making unannounced visits to a prison, based on his personal experience of being a member of an IMB in England:

"...definitely to turn up unannounced, free, morning, noon and night. I remember the last time before I moved to Jersey I had my week's duty and it was actually New Year's Day and I turned up at lunchtime or late morning. The prison officers were

¹⁷ Transcript of Public Hearing, 2nd April 2009, p.12

¹⁸ Transcript of Public Hearing, 26th March 2009, p.4

¹⁹ IMB Reference Book, Section 32.6: <http://www.imb.gov.uk/members-information1.html/reference-books/>

*extremely surprised to see a member of the board there, but it was actually excellent because the prisoners were largely on association, there was ... the prison officers were doing good things with them and relating to them and so on, and it was just a different time from the usual routine in the prisons.*²⁰

4.18 Jurat Tibbo explained to the Panel that there was benefit in the Board members be accompanied by an officer during their visits, as often that accompanying officer was able to help with a query or the concern being expressed by the prisoner there and then.²¹

4.19 This was also an issue that was discussed with Mr Millar during his attendance at the Public Hearing, where he explained the system that was in place in Scotland:

*"You know, some establishments train their board of visitor members so that they can carry keys and move around the establishment without escort. The same happens in Scotland but the visiting committees themselves and individual establishments make the decision about whether they want to be key trained and carry keys. There are more who opt not to than there are who carry keys in the Scottish system."*²²

4.20 The security implications of training Board of Visitor members to carry keys and walk around the prison independently were discussed with Mr Millar, and with reference to the visiting committees in Scotland, he explained that some members may feel intimidated about the prospect of going around the establishment on their own.²³ However, with reference to the Jersey Board of Visitors he went on to explain:

*"The Jurats, probably again because of their position, have a greater understanding of prisoners' criminal activity, criminal behaviours, they are generally more confident, more confident individuals. So that would probably apply less to Jersey than it does to appointees in England and Scotland. Of course, just because you appoint them to a role, you cannot make them confident to go round a prison."*²⁴

4.21 Jurat Tibbo made reference to this issue during his attendance at a Public Hearing:

"I would also add that to suggest there is no danger for anyone walking around the prison on his or her own is hardly correct, as evidenced recently when a fully trained

²⁰ Transcript of Public Hearing, 26th March 2009, p.13

²¹ Transcript of Public Hearing, 2nd April 2009, p.5

²² Transcript of Public Hearing, 26th March 2009, p.31

²³ Transcript of Public Hearing, 26th March 2009, p.31

²⁴ Transcript of Public Hearing, 26th March 2009, p.34

*officer was attacked by a female prisoner who is now on an attempted murder charge.*²⁵

- 4.22 In terms of the security measures the Board of Visitors have in place for their visits, it was explained to the Sub-Panel that if the Board member meets with a prisoner on a one-to-one basis an officer would be stood directly outside the door, or alternatively, if the prisoner did not mind, the officer would sit in whilst the prisoner met with the Board member.²⁶

KEY FINDING

- 4.23 The Sub-Panel acknowledges the reasoning behind officers accompanying a member of the Board around the prison, and thereby being able to assist, and answer prisoners' queries. The Sub-Panel further fully supports the need to ensure the safety of the Board of Visitor Members. However the practice of escorted visits detracts from the ability for the Board to be independent and remain autonomous.**

RECOMMENDATION

- 4.24 Part of the training for new members of the Board should include key training members to enable them to make unaccompanied visits around the prison. This training process should also include training for members in terms of security procedures and protocols, to ensure members are adequately informed of the methods necessary to protect their personal safety. The Sub-Panel recommends that all members of the Board should receive this training, with the result that Board members then feel comfortable undertaking unescorted visits around the prison. The Sub-Panel believes that this is essential to enhance the independence and the autonomy of the Board, and to bring it in line with long established practices in the UK.**

Dealing with prisoners' complaints

- 4.25 In terms of the process that is followed by the Board of Visitors once they have met with a prisoner, it was explained to the Panel by Mr Millar, Governor, HMP La Moye, that the first person the Board of Visitors discusses the issue with is the Governor. This normally takes place during the Board of Visitors' monthly meetings at the prison; however it was explained that if a Board member meets with a prisoner in

²⁵ Transcript of Public Hearing, 2nd April 2009, p.5

²⁶ Transcript of Public Hearing, 2nd April 2009, p.13

between the scheduled monthly meetings then they will make a point of speaking to the Governor before they leave the prison.²⁷

- 4.26 Jurat Le Breton also made reference to the process that is followed once a Board member has met with a prisoner:

"I think the IMB say that they can respond to a prisoner's complaints within a week. We do so there and then. We come from the prisoner's interview, if you like, or seeing him. We then go to the Governor and then – speaking for my own part – you go straight to the telephone and get on to a lawyer."²⁸

KEY FINDING

- 4.27 The Sub-Panel notes that the Board of Visitors claim to respond to the issues raised by prisoners quickly and efficiently, however there were concerns raised by prisoners (see section 8) in terms of the length of time it takes for the Board of Visitors to respond to their queries. The Sub-Panel acknowledges that this may be partially as a result of the Board not always being able to meet prisoners' expectations regarding what the Board is able to achieve.**

RECOMMENDATION

- 4.28 The Sub-Panel recommends that all prisoners' queries should be recorded and if possible, discussed with the relevant prison staff on the same day. All queries should be responded to within the period of one week. This will ensure that even if the Board are unable to deal with a specific issue raised by a prisoner, the prisoner still receives a response confirming this. If a particular query is taking a long time to resolve, prisoners should receive regular updates.**

Attendance at serious incidents

- 4.29 A further issue that arose during the course of the Sub-Panel's review was the attendance of Board of Visitor members during any serious incidents that may occur at the prison. The submission from Mr R. Pittman stated:

"IMBs have special responsibilities when there are prison suicides or disturbances. They have clear routines of entering the prison to ensure that the staff are acting properly and effectively in such crises. Members of IMBs are required to attend,

²⁷ Transcript of Public Hearing, 26th March 2009, p.17

²⁸ Transcript of Public Hearing, 2nd April 2009, p.20

properly identified by tabards, to observe. This does not appear to be a responsibility undertaken by the La Moye BoV.”

4.30 Furthermore, the IMB Reference Book outlines the role of the IMB during serious incidents, which is as follows:

The object of an IMB member’s presence during a serious incident is to

- *observe procedures*
- *safeguard the rights and interests of both prisoners and staff*
- *provide officials and Ministers with an independent account.*²⁹

4.31 The Reference Book goes on to explain that although Board members do not have any executive authority, and should not intervene in management, they have a duty to monitor, observe and record serious incidents, and have a duty to visit the incident area and remain as observers until a resolution is reached subject to any advice on safety or security grounds from the Incident Commander.

4.32 The Sub-Panel asked Mr Millar what arrangements were in place for members of the Board of Visitors to be called urgently to the prison during the occurrence of a serious incident, such as a riot or a suicide. Mr Millar explained that there was no requirement for them to attend, and that this was not part of their role, but that the general practice would be for the prison to inform the Chairman of the Board of the incident as soon as practically possible.³⁰

4.33 This was an issue that was discussed with the Jurats during their attendance at the Public Hearing, where Jurat Le Breton stated:

*“I know that the procedure is to call in the Board of Visitors’ Chairman as quickly as possible but where the fire was concerned you went there the very next day and then there was a report, a full report, made by the Deputy Governor for the President and the members of the board subsequent to that so that the Board knew exactly what had gone on and how it had been dealt with and so on.”*³¹

4.34 With regard to the fire incident, Jurat Tibbo further stated:

“The Deputy Governor phoned the Minister at the same time who said he or she would go up the next day and just for the Deputy Governor to deal with it. He phoned me and I went up the next day. One of the suicides that was referred to, I was telephoned within half an hour and I was up there within the next half an hour.

²⁹ IMB Reference Book Section 35: <http://www.imb.gov.uk/members-information1.html/reference-books/>

³⁰ Transcript of Public Hearing, 26th March 2009, p.33

³¹ Transcript of Public Hearing, 2nd April 2009, p.64

*What could I do? Nothing. The matter, the whole situation, was being investigated by the police.*³²

- 4.35 The Sub-Panel was concerned that this statement indicates a lack of understanding of the rationale for having a member of the Board of Visitors present at a serious incident. A member of the Board should be at the scene as soon as possible as an independent observer to ensure that due process is observed, and if required, to subsequently provide an independent account of the events that took place.

KEY FINDING

- 4.36 The attendance of members of an Independent Monitoring Board at serious incidents provides a safeguard for the interests of both prisoners and staff, and leads to an independent account being available should any issues arise following the incident. The Sub-Panel views the lack of standardisation regarding the attendance of a Board member at serious incidents as a failing of the current system. A Board member should be present as soon as possible, so as to protect the welfare and interests of both prisoners and staff alike.**

RECOMMENDATION

- 4.37 The Sub-Panel strongly recommends that a member of the Board of Visitors should be called to the prison at the earliest possible opportunity during a serious incident, and should follow the procedure adopted by Independent Monitoring Boards. The Board member's role would be to act as an independent monitor able to deliver a fully independent assessment of what was taking place. There should be a further requirement for that member to file a report of the incident within 24 hours of their attendance.**

The Jurats' willingness to publicly raise issues arising from the prison

- 4.38 One of the submissions to the Sub-Panel was from Mr M. Fennell, a former BBC Home Affairs correspondent, who explained the following:

"During that time I visited all seven prisons (including HMP Weare, which no longer exists) in Devon and Dorset and had not infrequent dealings with the chair or vice-

³² Transcript of Public Hearing, 2nd April 2009, p.65

*chair of most of the BoVs (Board of Visitors), usually with a view to broadcasting items about matters of concern or interest.*³³

4.39 The submission went on to explain that although Mr Fennell had now been resident in Jersey for just over a year, he has not become aware of any Jurats publicly addressing any issues emanating from HMP La Moye.

4.40 These comments were echoed by Mr Pittman during his attendance at a Public Hearing, where he explained:

*"I also think because of their positions as Jurats and respected, highly respected, members of Jersey and its establishment that they are not really in the position to be able to make truly forthright criticisms of the prison and its operations here."*³⁴

4.41 This was an issue that was discussed with the Minister for Home Affairs during his attendance at a Public Hearing, where he stated:

*"I think that if there is a downside on the role of the Jurats on the welfare side, it is that actually they would feel constrained by their role as Jurats to not in any sense become involved politically as a pressure group."*³⁵

4.42 However, Mr Millar disagreed with this observation and explained that the Board of Visitors do raise concerns and issues with the Minister, but what they do not do is seek to make that public and have that presented to the media.³⁶

4.43 This was a view that was echoed by Jurat Clapham who explained that the Board of Visitors definitely see it as their duty to highlight any problems at La Moye, both with prisoners and with the conditions there, however it was believed that it was not necessary for the Board of Visitors to raise its concerns through the media. Jurat Clapham went on to explain:

*"We certainly do not feel we are part of an establishment that means we cannot say something about it but we will say it to the people we thought were appropriate."*³⁷

4.44 The Sub-Panel received correspondence from Jurat Tibbo requesting for it to be confirmed that the Board of Visitors produces an Annual Report, which has attracted media attention in recent years.³⁸

³³ Submission from Mr M. Fennell

³⁴ Transcript of Public Hearing, 26th March 2009, p.3

³⁵ Transcript of Public Hearing, 26th March 2009, p.36

³⁶ Transcript of Public Hearing, 26th March 2009, p.36

³⁷ Transcript of Public Hearing, 2nd April 2009, p.45

³⁸ Correspondence from Jurat Tibbo, dated 17th July 2009

KEY FINDING

4.45 Whilst the Sub-Panel fully supports the view that any problems should first be addressed through the Governor, followed by the Minister for Home Affairs if necessary, the Sub-Panel is nevertheless concerned that as suggested by the Minister himself, the nature of the Jurat's role may reduce the likelihood that Board members would make their concerns public.

Meetings with the Minister for Home Affairs

4.46 It was explained to the Sub-Panel by Jurat Tibbo that a further role of the Board of Visitors is to hold quarterly meetings with the Minister for Home Affairs; the Chief Officer, Home Affairs; and the Prison Governor. Jurat Tibbo explained that these meetings had been arranged at the instigation of the Board, and had been taking place for the last few years.³⁹

KEY FINDING

4.47 The Sub-Panel views the quarterly meetings with the Minister for Home Affairs, the Chief Officer of Home Affairs, and the Prison Governor as a wholly positive initiative by the Board of Visitors, and supports it fully.

RECOMMENDATION

4.48 The Sub-Panel recommends that all such meetings must be fully minuted and recorded.

³⁹ Transcript of Public Hearing, 2nd April 2009, p.7

5. Training

5.1 A letter to the previous Minister for Home Affairs from Mr R. Pittman asked the Minister what training members of the Board of Visitors receive, and whether they attend IMB training courses in England, which is a requirement for all IMB members. The Sub-Panel discussed the training requirements for Board members with Mr Millar, and he explained:

“There are not technical requirements at present, at least nothing that is specified. There are certainly what I would regard as prison training requirements that any new members appointed I would want to offer them and put them through a form of induction, but my understanding is that has not applied in the past.”⁴⁰

5.2 This was discussed with representatives of the Board of Visitors during a Public Hearing, where Jurat Tibbo explained:

“We do not get training per se but our background as Jurats – court procedures and the judicial system – gives us experience.”⁴¹

5.3 The Governor further explained that as there would be new members joining the Board fairly soon, he would want to put them through a form of induction into the role, and he believed that the Board of Visitors themselves would have areas that they would want to address as far as an induction programme was concerned.⁴²

5.4 The Sub-Panel discussed the training requirements for IMB members during its visit to meet with representatives of HMP Winchester’s IMB, the details of which are outlined in section 6 of this report. Additionally, the National Training Programme available to IMB members for 2009 is clearly outlined on the IMB website, and includes courses such as a New Chairs and Vice Chairs course; Foundation Course for new members; Continued Development Course for existing members; and thematic workshops on issues relating to Foreign Nationals; Deaths in Custody and Mental Health.⁴³

⁴⁰ Transcript of Public Hearing, 26th March 2009, p.38

⁴¹ Transcript of Public Hearing, 2nd April 2009, p.32

⁴² Transcript of Public Hearing, 26th March 2009, p.38

⁴³ Accessed from <http://www.imb.gov.uk/members-information1.html/training-courses/> on 14th May 2009

KEY FINDING

5.5 It is quite clear to the Sub-Panel that training is a vital element in ensuring members of the Board are able to fulfil their roles appropriately, especially with regard to induction training for any new members of the Board.

RECOMMENDATION

5.6 The Board of Visitors should investigate the possibility of members attending Independent Monitoring Board training courses in the UK. An induction period should also be introduced for new members of the Board, to include key training and security training.

6. The position in other jurisdictions

6.1 As part of its review, the Sub-Panel undertook to consider the situation in other jurisdictions. The following is a summary of this information:

The Isle of Man

6.2 The Isle of Man has an Independent Monitoring Board, as established by “The Custody Act 1995”. The IMB’s principle duty is to *“satisfy itself as to the state of prison premises, the administration of the prison and the treatment of prisoners.”*⁴⁴

6.3 The Isle of Man’s IMB used to be called the ‘Board of Visitors’, and as with the Jersey system, used to consist of Justices of the Peace. However, as explained by the Board’s website, it now includes independent members of the public to ensure a broad representation of the local community, with men and women of all ages and backgrounds. Two members of the IMB attend the Jurby Prison in the Isle of Man each week on a rota basis, and then bring up any matters arising from these visits during the monthly Board meetings.

Guernsey

6.4 In Guernsey, the equivalent to Jersey’s Board of Visitors is called “The Panel of Visitors” and is made up of six volunteers. The Panel of Visitors is constituted in line with “The Prison Administration (Guernsey) Ordinance 1998.”⁴⁵ Under this Ordinance, at least two members of the Panel are required to visit the Prison once in every month.

England and Wales

6.5 In England and Wales, every prison has its own Independent Monitoring Board (IMB). IMBs are considered to be the prisons’ independent watchdogs, and the members sitting on these Boards are drawn from the local community.

6.6 As part of its review, the Sub-Panel visited HMP Winchester and met with representatives of the Prison’s IMB, to compare the workings of that system with that of the Jersey Board of Visitors. Although the issues discussed were based solely on the members’ experience with HMP Winchester’s IMB, the Panel understands that these working practices are followed by IMBs throughout England and Wales.

⁴⁴ <http://www.gov.im/dha/prison/bov.xml>

⁴⁵ <http://www.guernseylegalresources.gg/ccm/legal-resources/ordinances/police-prison-and-fire-services/prison-administration-quernsey-ordinance-1998.en>

Prisoner awareness of the IMB:

- 6.7 One issue the Panel wished to discuss with members of the IMB was how prisoners in HMP Winchester were made aware of the Board, its functions, and when or how they could arrange to meet with a member of the Board.
- 6.8 All new prisoners to HMP Winchester are shown a video about the IMB as part of their induction programme. This video clearly explains the process prisoners need to follow to request a meeting with an IMB member.
- 6.9 Prisoners' awareness of the IMB is also helped by the fact that a member of the Board is likely to be present in the prison for at least three days each week, and prisoners therefore see members of the IMB around the prison frequently.

Prisoners' meetings with a member of the Board:

- 6.10 In terms of the process prisoners go through to request a meeting with a member of the IMB, each wing has an 'IMB' dedicated locked box, where prisoners can post applications to meet with a member of the Board. Application forms are clearly available on the wings next to each of these boxes. All applications to meet with a member of the Board are cleared from each of the boxes on the wings at least once a week, and every application (written or verbal) is then recorded on a separate form by the IMB entitled 'application by prisoner', and logged in a register. The IMB has a statutory requirement to keep records of all applications for seven years.
- 6.11 Once a prisoner has made an application to meet with a member of the IMB the maximum time they would then wait to hear back from the Board should be five working days. The Board has a statutory requirement for members to conduct a rota visit to the prison once a week. Following each rota visit a rota report is then submitted to the Governor, who is duty bound to respond to each report from the Board (this response is usually received within three or four days).

Visits of the IMB:

- 6.12 HMP Winchester's IMB consists of seventeen members in total. In terms of the rota visits made to the Prison by members of the Board, each month is divided into four sessions, and the IMB members are divided into four teams. Each team is then allocated a one week period where they are 'on call' and can attend the prison as much as they wish.
- 6.13 In contrast to Jersey's Board of Visitors, all visits by the IMB are unannounced and every member of the Board is key trained, and therefore able to take themselves around the prison without being escorted. Most visits are therefore made without the member of the Board being accompanied by an officer. With the exception of prisoners in the segregation unit, IMB members are allowed to unlock prisoners from

their cells to speak to them, providing an officer has been notified beforehand that they are going to speak to that prisoner. Although members have the freedom to visit any section of the Prison, it was explained to the Sub-Panel that it is vital that officers are always aware of where they are at all times, and which prisoners they are speaking to.

- 6.14 The IMB meets as a Board once a month. During these meetings the Prison Governor is invited to attend a section of the meeting and report appropriate matters. It was explained to the Sub-Panel that members felt it was very important for the Board to maintain a good relationship with the Governor, but also be seen as totally independent.

Lawyer/prisoner communication:

- 6.15 It was explained to the Sub-Panel that IMB members do not get involved with speaking to lawyers on behalf of prisoners, as the IMB does not see opening gates to help prisoners with legal concerns as one of their functions, because they are there to monitor and not there as a befriending body.

Attendance at serious incidents:

- 6.16 All IMBs are required to have a 'serious incident contingency plan' which outlines what a serious incident is, and how it is to be dealt with. HMP Winchester is required to notify the IMB as soon as a serious incident, such as a sudden death or a riot, occurs. If an IMB member is already in the prison when the incident occurs, they are asked to go and observe/monitor the incident. If there is not a member present, someone is asked to attend as soon as possible. It is a requirement for all Board members to live within 20 miles of the prison, and so this helps to ensure a member is able to arrive quickly when necessary. If it is an extended incident, Board members work on a two hour rota system to ensure there is a member present at all times. An IMB representative is also asked to witness most situations where officers need to use control and restraint procedures.
- 6.17 It was explained that the purpose of the presence of an IMB representative at serious incidents is two-fold. By having an IMB member to monitor the event it helps to ensure prisoners are not abused, and also helps to ensure the prison staff are not abused. The IMB representative is then able to act as a witness in case any allegations are later made. As a result, the Governor is always pleased to have the IMB present as it helps to protect him and his staff.
- 6.18 There is an observation book for incidents and the IMB representative present at any serious incident is tasked with writing down whatever had happened whilst they were

there. If the Ombudsman⁴⁶ then comes to investigate they request access to the IMB's report.

Training:

- 6.19 All members of the IMB work through the National Induction Programme for IMB Members. A security talk is also given to new members by the head of HMP Winchester's security department. All new members are required to complete a year's probation period. As part of their induction, new members shadow as many other members as possible in order for them to learn how to act/interact with the prisoners, and are required to attend at least three statutory rota visits – however it was explained that in practice they attend many more than this. All members of the IMB are required to attend any central IMB training, and after sitting on an IMB for three years, are able to complete further training. Two delegates from HMP Winchester's IMB attend the IMB Annual Conference, and the Board arranges one visit to another prison per year, to meet with other IMB members.

Previous IMB Membership:

- 6.20 It was explained to the Sub-Panel that up until about 1994 every IMB had to have two or three magistrates as members of the Board (Magistrates in the UK are the equivalent of Jurats in Jersey, as they have no legal background). However, this situation was changed because it was perceived to be inequitable. This change was shortly followed by the Human Rights Act and it was thought this would have prevented the situation from continuing anyway. The requirement for each Board to include two or three magistrates therefore ceased three or four years ago. It was explained to the Sub-Panel that there are however no measures preventing magistrates from sitting on an IMB, or being a Board Chair or any other position. There is no legal maximum to the number of magistrates on a Board but any appointments look at the balance of the Board and take this into consideration.

⁴⁶ The Prisons and Probation Ombudsman in the UK investigates complaints from prisoners, those on probation and those held in immigration removal centres. He also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation hostels (Approved Premises).

7. The current constitution of the Board of Visitors

7.1 During the course of its review, the Sub-Panel considered the current constitution of the Board of Visitors, with regard to comments that had been made in a submission by Mr R. Pittman to the previous Education and Home Affairs Panel in March 2008, which highlighted concerns regarding the Board of Visitors consisting of Jurats. Mr Pittman stated:

“First of all this seems highly inappropriate in that the Jurats are part of the machinery of justice and will have been active in determining guilt and the length of sentence of those imprisoned in La Moye. It is hard to imagine how they can be totally neutral and objective adjudicators of prisoners’ complaints and concerns when it is they who have sentenced them and ‘sent them down’.”

7.2 Mr Pittman subsequently extended upon this point during his attendance at a Public Hearing with the Sub-Panel:

“I think it is ironic and inappropriate that Jurats who play an integral part in the whole machinery of justice are also those people who are meant to monitor the prison, and I do not believe that they are suitable people, therefore, to hear complaints from prisoners who might have a justified complaint about the system there.”⁴⁷

7.3 This issue was discussed with members of the Board of Visitors during their attendance at a Public Hearing, where Jurat J. Tibbo made the following statement:

“It was suggested that a broader group of people was required to form the board yet Jurats are from different backgrounds, a cross-section of the community. In their positions as Jurats they have always been considered to be independent, a factor which is recognised by the courts. There is no reason to believe – or I have no reason to believe – that any one of those Jurats changes when they act as members of the Board of Visitors.”⁴⁸

7.4 It was further explained by Jurat Tibbo that he did not believe the prisoners were aware of the fact that members of the Board of Visitors were Jurats:

⁴⁷ Transcript of Public Hearing, 2nd April 2009, p.3

⁴⁸ Transcript of Public Hearing, 2nd April 2009, p.8

"I think most of them do not even know (a) that we are Jurats and (b) because we are not announced as Jurats."⁴⁹

- 7.5 However, Mr Pittman did not believe that the prisoners not being aware of the situation, or not having complained about the potential conflict, were reasons to argue that the current constitution of the Board is appropriate:

"Well, to my way of thinking you cannot expect a prisoner at La Moye – perhaps you have found differently – would know the ins and outs of this matter. A prisoner at La Moye would not know how independent monitoring boards... or probably, unless he has served time in an English prison, as to how it operates in England."⁵⁰

- 7.6 In contrast to the above statements, during the Sub-Panel's meetings with prisoners at HMP La Moye, the Sub-Panel found that the prisoners were very aware of the role of the Jurats. This may be a result of the direct contact some prisoners have with Jurats in the Royal Court. The view that prisoners were not aware of the dual role of the Jurats was further conflicted by a letter that was sent to the Jersey Evening Post from D. Hare, a prisoner at HMP La Moye. The letter stated:

"For many years now the inmates have been complaining how it is very wrong that the Board of Visitors is, in fact, the very people who sentenced them to prison. It is very unfair and biased and during the many years I have spent in La Moye, I have yet to hear anybody say that they see the Jurats as being in a strong position to help them. And I have also yet to hear that anybody has received any help from them. The Board of Visitors should be an independent body and not be the very people who sentence us. It's about time the judicial system in Jersey had a major overhaul to get with the real world."⁵¹

- 7.7 With reference to the dual role of the Jurats, Jurat Le Breton made the following statement during the Public Hearing:

"I can honestly say that when I go up to the prison - and I am sure it is true of all the Jurats that go - we are not Jurats then. We are people that are sympathetic and wanting to help."⁵²

- 7.8 The Sub-Panel does not question the Board's empathy; however it was concerned by this statement, as it highlights the acknowledgement that in order for the Board of Visitors to function appropriately it was necessary for them to set aside their role as

⁴⁹ Transcript of Public Hearing, 2nd April 2009, p.50

⁵⁰ Transcript of Public Hearing, 26th March 2009, p.10

⁵¹ Jersey Evening Post, Letters to the Editor, Friday 3rd April 2009

⁵² Transcript of Public Hearing, 2nd April 2009, p.27

Jurats. The Sub-Panel further believed that it was not possible for a member of the Board of Visitors to comment on their own impartiality, or ability to set aside their role of being a Jurat.

- 7.9 The constitution of the Board of Visitors was discussed with representatives of HMP Winchester's IMB during the Sub-Panel's visit. One member of the IMB described Jersey's Board of Visitors as it was currently constituted as archaic. He further stated that the Board of Visitors was not an independent board, with there being huge risks attached to the system, especially for the welfare of the prisoners.
- 7.10 This was elaborated upon by a second member of the IMB, who explained that one of the principles of IMB members is to not know what a prisoner has done, to ensure they are treated fairly and without prejudice. However, the Jersey system makes this impossible.
- 7.11 On a slightly separate issue, one matter that arose during the course of the Sub-Panel's review was the fact that unlike IMBs in England, Jurats do not apply to be a member of the Board of Visitors; it is a function that is fulfilled because of their role as Jurats:

Jurat J. Tibbo:

"We, in fact, as Jurats do not have a vested interest because you will be aware that in fact it is the Prison Board of Visitors Regulations that require the Board of Visitors to consist of at least 7 Jurats. It is not the Jurats who are seeking the position."⁵³

- 7.12 This was an issue that was raised by representatives of HMP Winchester's IMB, who explained that people apply to be a member of an IMB, and work hard to get that role.
- 7.13 This was further discussed during the Public Hearing with the Board of Visitors, where they were asked which role they would choose if they had to choose between being in court or being on the Board of Visitors.

Jurat J. Tibbo:

"Well, there is no choice. It would obviously be being a Jurat."

⁵³ Transcript of Public Hearing, 2nd April 2009, p.4

Deputy M. Tadier:

"In the Royal Court?"

Jurat J. Le Breton:

*"In the court. The work is much more varied."*⁵⁴

7.14 However, Jurat Clapham went on to explain:

*"But also I welcome, I like the fact that we can put something in a different way. For me personally I quite like being able to do that and hope I do it to the best of my ability and I would probably be the sort of person that would volunteer to be a Prison Board of Visitor if I lived in England or whatever."*⁵⁵

7.15 A further issue arising from the Jurats sitting on the Board of Visitors is the implications the role has on their ability to attend meetings of the Board. This was an issue discussed during the Jurats' attendance at the Public Hearing, where Jurat Tibbo explained the difficulties the Jurats have in attending every meeting of the Board, as a result of their duties in court:

*"Honestly, we cannot always go up. There are not always 7 of us there. We are not going to pretend that all 7 of us attend every month because some people are in court."*⁵⁶

7.16 The Regulations state that at its first meeting, the Board of Visitors should fix a quorum of not less than 3 for the purpose of carrying out its duties.⁵⁷

7.17 Mr Pittman explained that in terms of the future constitution of the Board, it would be preferable if the Chairman of the Board was a layperson, and not a Jurat. However Mr Pittman further acknowledged that it might be helpful to the Board if it did consist of a minority membership of Jurats.⁵⁸ Mr Pittman further explained:

*"I honestly think the future, if there is a change in the system here and you advocate it, it should get slotted into the whole I.M.B. organisation in England and the members of such a board of visitors - perhaps the nomenclature should also be changed - should actually go for training and have the feedback and the know-how and the instruction from the English I.M.B.s."*⁵⁹

KEY FINDING

⁵⁴ Transcript of Public Hearing, 2nd April 2009, p.62

⁵⁵ Transcript of Public Hearing, 2nd April 2009, p.63

⁵⁶ Transcript of Public Hearing, 2nd April 2009, p.58

⁵⁷ Regulation 7(1)

⁵⁸ Transcript of Public Hearing, 26th March 2009, p.12

⁵⁹ Transcript of Public Hearing, 26th March 2009, p.17

7.18 The current situation precludes individuals that are not Jurats from becoming a member of the Board of Visitors, and there may be individuals within the Island that are very keen to join a similar body, but are currently prevented from doing so.

The Sub-Panel is of the opinion that whilst the Jurats genuinely believe themselves to not be conflicted, by the nature of their primary role within the judiciary this argument is simply unsustainable. It is vital for the Board of Visitors to not only be independent, but to be seen as being independent, especially from the perspective of the prisoners. The current constitution of the Board precludes this, with the link between the Board of Visitors and the Jurats being impossible to ignore. The Island therefore needs to be moving away from the dual role of the Jurats.

RECOMMENDATION

7.19 The Minister for Home Affairs should implement a new system, enabling independent members of the public to sit on the Board of Visitors. However as with the UK system where there is nothing preventing a magistrate from sitting on an IMB, there should be nothing preventing a Jurat from sitting on the Board of Visitors. This would allow the Board of Visitors to draw on a wider pool of people.

Does the Jurats' role enable them to assist prisoners with issues that other individuals would not be able to assist them with?

7.20 One issue that arose during the course of the Sub-Panel's review was whether the Jurats' role in the judicial system enabled them to 'open doors' for prisoners that would not be possible if the Board of Visitors consisted of individuals that were not members of the Island's judiciary. This matter was discussed with Jurat Le Breton during his attendance at the Public Hearing, and he believed that having Jurats sitting on the Board of Visitors was of benefit to the prisoners, rather than representing a conflict:

*"It was made to sound as though involvement with the judiciary was a perceived handicap or would create some problem. In fact it can be seen entirely the other way. In other words, we can be of more benefit to the prisoner's welfare because we have access to their lawyers."*⁶⁰

⁶⁰ Transcript of Public Hearing, 2nd April 2009, p.20

7.21 This was also an issue that was discussed with the Minister for Home Affairs during his attendance at a Public Hearing, where he explained that having a group of individuals that carries some weight is undoubtedly useful in terms of dealing with issues such as prisoners being unable to get hold of their lawyers. The Minister went on to explain:

“If one of the Jurats rings up a law firm to complain on behalf of a person that the lawyer simply has not come and seen him, there is going to be action, whereas one doubts whether there would be the same reaction if it was an entirely lay person.”⁶¹

7.22 These were views that were echoed by Mr Millar, who explained that the Jurats’ position gives them privileged access to certain areas that can be helpful to prisoners, although it was acknowledged that these links and communications could be developed by other independent individuals over time. Mr Millar went on to explain that although the prison and the management side of the prison would consider that it would be possible to remove the Jurats and to reconstitute the Board with independent members, he believed that individual prisoners may feel that they had suffered as a result, and had lost privileged access that they perceive the Jurats might have.⁶²

7.23 Jurat Clapham also explained an additional benefit of the Jurats also sitting on the Board of Visitors:

“The other thing that I think is a by-product to the fact that they are Jurats, and maybe it could be coped with in another way, is that if we sentence people that we think are vulnerable for all sorts of reasons, either because of the crime they have done, they might be isolated or bullied or be a young girl who has to go to the Women’s Unit (which we keep highlighting is not a good thing but anyway) all Jurats will alert the Prison Board and we would make it our duty to check that person is all right.”⁶³

7.24 The Minister further explained that individuals that work in and around the criminal justice system – including the Jurats – have a greater understanding of the issues that arise and the problems that are faced by prisoners.⁶⁴ When asked if the Minister thought prisoners might be deterred from meeting with the Board of Visitors because of their dual role, the Minister explained:

⁶¹ Transcript of Public Hearing, 26th March 2009, p.5

⁶² Transcript of Public Hearing, 26th March 2009, p.20

⁶³ Transcript of Public Hearing, 2nd April 2009, p.67

⁶⁴ Transcript of Public Hearing, 26th March 2009, p.9

"I think I could concede that some prisoners might see Jurats as being some sort of establishment figure or pro prosecution figure or whatever that might be a hindrance, but it is not the reality, of course, of the role that they perform."⁶⁵

KEY FINDING

7.25 The Sub-Panel recognises that, as a result of their main function within the judiciary, Jurats are well placed to gain access to a lawyer on a prisoner's behalf. However, the Sub-Panel questions whether it is the role of the Jurats to assist prisoners with legal queries in this way. This is certainly not something that falls within the remit of IMBs and it is considered that this function is supplementary to the Board's main role.

Moreover, the Sub-Panel is of the opinion that even if this function were legitimate, this level of relationship between Board members and lawyers could be built up over time by an appropriately skilled independent member of the public. If the Board of Visitors do require, and have special access to lawyers, this should be by virtue of their position as members of the Board of Visitors, and not by the contacts they have developed indirectly through their work in the Royal Court.

RECOMMENDATION

7.26 The ease with which the Jurats are able to access the prisoners' lawyers should not feature in the decision as to whether the Board of Visitors should include independent members of the public. If there are issues with lawyers not responding to prisoners' contact this is a systemic failure which needs to be resolved without having to rely on the Jurats to contact them on their behalf.

7.27 This issue raises questions regarding what the function is of the Board of Visitors, and whether one of its roles is to assist prisoners with contacting their lawyers. It was explained by Mr Millar that as a result of the Board of Visitors comprising of Jurats, its role in Jersey is somewhat different to the role of the equivalent bodies in Scotland and the United Kingdom:

"The kind of matters that they raise with the board of visitors here they would probably raise with their legal representatives in the Scottish system and that would probably be true in England as well. Here, as I say, they probably feel they get that

⁶⁵ Transcript of Public Hearing, 26th March 2009, p.10

*more privileged access because of the role of the Jurats. They are not the kind of complaints they would normally take to a board of visitors in England or Scotland or anything.*⁶⁶

- 7.28 With reference to this issue, Mr Pittman questioned whether contacting the prisoners' lawyers was a role that should be adopted by the Board of Visitors:

*"I also do slightly question whether it is the job of an independent monitoring board member actually individually to help a prisoner with advice on legal matters or contact and so on. There should be ... that is something which the prison should be able to offer..."*⁶⁷

- 7.29 Jurat Tibbo subsequently confirmed that:

*"It was suggested that Jurats gave legal advice. That is not so either, other than in the most simple form when dealing with trial procedures and with the help of a Greffier, who is in fact the Secretary of the Board, who deals with these matters in the course of her work. Obviously if we can call upon experience then we do so and will guide a prisoner, but in most cases the members of the board will emphasise the prisoner must discuss legal issues, such as sentencing - we never discuss sentencing - with their lawyers. But we do help to establish contact with their lawyers and we get things done fairly quickly as a result."*⁶⁸

- 7.30 Mr B Millar, Governor, HMP La Moye, explained that before discussing any changes to current procedures it would be important to clarify the role that is required of the Board of Visitors:

*"I would agree with the Minister's comments and separating the roles between a watchdog role and a role that might be involved with disciplinary cases. But obviously it would require a change in the law, so I think we would have to think carefully about what we want the board of visitors or the role you want that body to perform, and that might inform how best to make up that body."*⁶⁹

KEY FINDING

- 7.31 The Sub-Panel believes that there is a lack of clarity surrounding the role of the Board of Visitors in Jersey, which would benefit from investigation by the Minister for Home Affairs. For example, whether it simply has a monitoring**

⁶⁶ Transcript of Public Hearing, 26th March 2009, p.21

⁶⁷ Transcript of Public Hearing, 26th March 2009, p.15

⁶⁸ Transcript of Public Hearing, 2nd April 2009, p.8

⁶⁹ Transcript of Public Hearing, 26th March 2009, p.7

role, whether the Board should be involved with appeals, and whether members should be initiating contact with the prisoners' lawyers.

RECOMMENDATION

7.32 The Minister for Home Affairs should initiate a full review of what the role of the Board of Visitors should be in Jersey, to be completed within the next six months with a report then being brought to the States.

The process that is followed if a visiting Jurat has been involved with an individual prisoner's case

7.33 With regard to the process that is followed if a prisoner asks to see a member of the Board of Visitors, and the visiting Jurat had been involved with that prisoner's sentencing, it was explained to the Panel by Mr Millar, Governor, HMP La Moye that in some circumstances the prisoners prefer this arrangement:

"Because of a fairly recent case where one of the Jurats was extensively involved with an individual prisoner's case. It was put to the prisoner and the prisoner's response to that was: "Well, they know the case and I would prefer it was them that I saw because I do not have to start from scratch and explain the background to them."⁷⁰

7.34 This was an issue that also mentioned by Jurat Clapham, who explained that:

"Quite recently somebody who the Jurat had not only sentenced them, they had found them guilty, that Jurat was going up and the prison said: "Do you want to see that person? Clearly, you might not." "No", was the answer, "I would rather see them because they will understand more about it."⁷¹

7.35 The Panel asked the Governor what the situation would be if it became apparent that prisoners at HMP La Moye were not happy with the current constitution of the Board of Visitors. Mr Millar explained to the Panel that if he became aware of that he would be advising the Minister and suggesting a change in the law because the body would not be able to perform the function it was set up for; however he went on to explain that he did not feel the need for that to occur at this stage.⁷²

7.36 Mr Millar summarised that the main issue was whether the current situation merits a change in the legislation, and whether a different constituted body would definitely

⁷⁰ Transcript of Public Hearing, 26th March 2009, p.13

⁷¹ Transcript of Public Hearing, 2nd April 2009, p.25

⁷² Transcript of Public Hearing, 26th March 2009, p.13

perform the function any better, or provide better support to the prisoners, than the current situation. However, he confirmed that he was not convinced that this was the case.⁷³

KEY FINDING

7.37 The Sub-Panel acknowledges that there may be both positive and negative implications of a Jurat who has been involved in a prisoner's case later coming into contact with that prisoner in their role as a member of the Board of Visitors. However, as demonstrated by the comments received from the prisoners during their meetings with the Sub-Panel (see Section 8); it is evident that the prisoners are not happy with this situation. With a fully independent Board of Visitors, this situation simply would not occur.

⁷³ Transcript of Public Hearing, 26th March 2009, p.20

8. Meetings with prisoners at HMP La Moye

8.1 During the course of its review, the Sub-Panel visited HMP La Moye, and met on a confidential basis six prisoners: two adult male offenders; two female offenders and two male young offenders; all of whom had met a member of the Board of Visitors since November/December 2008. These prisoners had been randomly selected from a group of 38 prisoners, and had simply been told that the Sub-Panel wished to meet with them to discuss the Board of Visitors. The prisoners made the following statements:

8.2 Adult male offenders:

- Of the two adult male offenders the Sub-Panel spoke to, one stated, *“Board of Visitors are the ones that put us in here”* and also expressed the perception that the Board of Visitors always agree with the prison.
- The adult male offenders also explained that there was one instance where 58 people wanted to see the Board of Visitors, however only 5 people of those 58 were picked to see the Board.
- It was also explained that the last time one of the prisoners had been to see the Board the members were in a hurry, and he was frustrated because he thought they were meant to listen to the prisoners, but he explained that the Board members do not ask any questions, or try to ascertain any further information.
- The time it took for prisoners to hear from the Board of Visitors about their query, after having met them, was mentioned by the adult male offenders, and the female offenders, with both sets of prisoners explaining that they had been waiting for responses for three to four weeks.

8.3 Female offenders:

- The female offenders made reference to the Jurats sitting on the Board of Visitors, and stated, *“they put us in here and now they’ve got a say in how to run us up here. It should be someone independent.”* They also believed the Jurats were making judgements based on their pasts and not taking into account how they behaved in prison.
- The female offenders referred to the notice they were given about a visit from the Board of Visitors, and explained that they were only told about the visit a couple of hours beforehand, and would appreciate further notice so the Board could read their files and check up on their progress.

8.4 Young offenders:

- In terms of the comments received from the young offenders, one explained that he had made a request to the Board about a certain issue, and was told that they would pass a message on to the Governor in response to this query, but then he never heard back from them.
- One of the young offenders explained, *“Having Jurats on there, if someone understands the legal process some are a bit sceptical and think “they’ve just given me 5 or 10 years, why should I go and see them?”*
- The young offenders explained it was believed better to just complain to the unit manager rather than going to the Board, because unit managers know the prisoners and speak to them frequently.
- The young offenders thought that if there were younger people on the Board it might help them to identify with them.
- It was also believed that a lot of prisoners do not use the Board as a result of them not understanding what it does, or how the Board of Visitors can help, with it just being used as one method to make complaints, and prisoners not really knowing what else they do.
- They also explained that as the Jurats put them in prison, they must have passed judgement on them, and so they might just meet with them and think *“well he deserves it”* if they go to see them.

8.5 With reference to the comments that had been made by the prisoners, Jurat Clapham made the following statement during the Public Hearing with the Sub-Panel:

“Can I just say that I think that if they said that it is because they know that is why you were there and so they are concentrating their mind, because I can honestly say that we have never had anybody not want to speak.”⁷⁴

8.6 However, the Sub-Panel strongly refutes this statement, as during its meetings with prisoners, care was taken to ensure that Panel members did not make reference to any concerns regarding the constitution of the Board of Visitors.

⁷⁴ Transcript of Public Hearing, 2nd April 2009, p.25

KEY FINDING

8.7 The Sub-Panel notes that the Minister for Home Affairs and the Jurats sitting on the Board of Visitors did not consider that the current constitution of the Board affected its independence, however the comments received from the prisoners that had met with the Board cannot be ignored.

The comments received indicate that the dual role of the Jurats is seen as a negative element. Significant concern was raised about a number of different, though inter-related issues: Board of Visitor members being judgemental as a result of having already found someone guilty of a crime; the clear lack of demonstrable independence; and from the young offenders, the belief that it would be easier for them to identify with members of the Board if it consisted of younger members.

These comments support the notion that the current constitution of the Board prevents it from fulfilling its function as an independent monitoring body, and support the Sub-Panel's recommendation for the constitution of the Board to therefore be addressed by the Minister for Home Affairs, and to ultimately include independent members.

9. Human Rights Compliance

9.1 The Human Rights (Jersey) Law 2000 was adopted by the States in February 2000 and came into force in December 2006. A submission from Mr R Pittman questions whether the current constitution of the Board of Visitors, whereby Jurats that sentence prisoners also sit on the Board of Visitors, is Human Rights compliant. This was an issue that was discussed with Senator Le Marquand, Minister for Home Affairs, during his attendance at a Public Hearing, where he explained that he had received confidential advice on this issue from the Attorney General. As a result of the confidential nature of this advice, the Minister was unable to share it with the Sub-Panel. The following statement was however made by the Minister:

“That letter of advice actually goes in some detail into the matter and concludes that provided there are certain safeguards in place in terms of procedure and so on which ensure that there is a distancing of Jurats who are sentencing people from Jurats who are dealing with people in terms of the appellate functions in relation to internal discipline matters dealt with by the Governor, that the Attorney General does not think it is incompatible with human rights provided there are these safeguards in place.”⁷⁵

9.2 The Sub-Panel went on to ask the Minister whether if a system was being designed from scratch, the overlap between the judiciary and the Board of Visitors would be avoided. The Minister explained that although it would be preferable to avoid a situation in which the individuals sentencing people were subsequently involved with appeals in relation to disciplinary matters, it was not his opinion that there was as much of a difficulty in those individuals also being the body that listens to and investigates prisoners' complaints. The Minister extended this statement:

“So, if you are asking me if we were designing a system as from scratch, would I want to have a third body of people, as it were, one body of people dealing with the prisoner appeals, one body of people dealing with sentencing, and one body of people dealing with prisoner complaints, I think I would want to separate the appeals function but I am relatively comfortable with the visitor aspect.”⁷⁶

9.3 The Sub-Panel sought legal advice from Mr J. Cooper of Doughty Street Chambers, London on the following issues:⁷⁷

⁷⁵ Transcript of Public Hearing, 26th March 2009, p.3

⁷⁶ Transcript of Public Hearing, 26th March 2009, p.5

⁷⁷ This advice is available to read in full on the Scrutiny website: www.scrutiny.gov.je

- What human rights issues are raised by the fact that Jurats, who are involved in sentencing prisoners, also sit on the Prison Board of Visitors, and may therefore be involved in dealing with the grievances of those individuals once they are in prison?
- Taking into account these issues, is the situation human rights compliant?
- Should it be advised that the current situation is not human rights compliant, what recommendations for changes would render it compatible?

9.4 Mr Cooper's advice focused on the following Convention rights from the human rights legislation:

Article 3: Prohibition of torture

Article 6: Right to a fair trial

Article 13: Right to an effective remedy⁷⁸

Article 14: Prohibition of discrimination

9.5 The following section will discuss the Convention rights highlighted in the advice received from Mr Cooper.

Article 3: Prohibition of torture:

9.6 Article 3 of the Human Rights (Jersey) Law 2000 states that, *"No one shall be subjected to torture or inhuman or degrading treatment or punishment."* Mr Cooper's advice explains that the governing principles promoted by the ECHR are not only concerned with acts of torture and prohibited ill treatment, but are also concerned with the framework that can allow ill treatment to occur. Allowing a culture whereby ill treatment can thrive will also amount to a violation of Article 3.⁷⁹

9.7 Mr Cooper's advice goes on to state:

"If it can be established, or even argued, that the current system of prison monitoring by the Board of Visitors is structurally flawed in its ability to enhance the quality of prison life and to prevent a culture that could lead to ill treatment committed by other inmates as well as the possibility of that treatment being carried out by a State official, it could be asserted that the framework violates the spirit of Article 3, if not the Article itself, in that Jersey's positive obligations to prevent ill treatment, however it manifests itself, have not been met."

9.8 It is further explained that where a person acts in a judicial capacity supervising the conduct of detainees, and may be responsible for determining early release,

⁷⁸ Mr Cooper's advice explained that Article 13, ECHR, is not contained in the Human Rights (Jersey) Law 2000, although Jersey remains bound by Article 13, ECHR as a matter of international law. According to the principles underpinning the UK's Human Rights Act 1998, the Human Rights (Jersey) Law 2000 will be considered to be the effective remedy for the purposes of Article 13, ECHR, and therefore the right to an effective remedy must be read into the Law as a whole see *Brown v Stott* [2003] 1 AC 681.

⁷⁹ *M.C. v Bulgaria* (2005)

disciplinary matters, or other adjudication issues, they cannot also be expected to be responsible for conducting investigations into complaints or allegations of ill treatment. If there is a dual function on the part of the Board of Visitors, a prisoner may be less willing to disclose his own misconduct or to complain about conditions. Individual prison staff may similarly be less willing to admit to problems if they are not sure whether a judicial authority could make use of the information in another setting.

9.9 Mr Cooper concludes:

“There is a danger that because of these perceived or actual conflicts of interest within the Board of Visitors that the Board is less effective in monitoring the prison and carrying out its role in preventing ill treatment within the prison. There is no concrete evidence of such ill treatment occurring at the present time, however there is a concern that because of the flaws in the structure of the Board of Visitors it would be less effective in identifying these problems, which in turn could permit a culture of toleration of acts or omission that might lead to such ill treatment. This raises questions of Jersey’s compliance with Article 3 of the European Convention on Human Rights (ECHR), which is part of Jersey law, as well as its duties under the European Convention for the Prevention of Torture or Inhuman and Degrading Treatment or Punishment (CPT).”

Article 6: Right to a fair trial

9.10 Mr Cooper’s advice explains that there are additional and specific concerns in relation to the appellate role played by the Board of Visitors in disciplinary hearings within the prison which need to be addressed in the context of Article 6 as well as the prohibition of ill treatment. He further explained that the role of the Board of Visitors in determining complaints also raises issues concerning Article 6.

9.11 Article 6 of the Human Rights (Jersey) Law 2000 states that, *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

9.21 With reference to Rule 94 of the Prison (Jersey) Rules 2007, which enables a prisoner found guilty of a breach of discipline to appeal to the Board of Visitors, Mr Cooper’s advice states:

“Prison disciplinary hearings will determine civil rights for the purposes of Article 6, ECHR⁸⁰ and they may amount to a determination of a criminal charge.⁸¹ Under certain circumstances the complaints procedure may determine civil rights.”

9.13 Mr Cooper’s advice goes on to explain that the issue for members of the Board of Visitors to consider when sitting in this appellate role is: are they impartial and do they have the requisite expertise to determine these issues? He summarises that in order to ensure the standards of Article 6 ECHR are met, Jurats who are members of the Board of Visitors should play either an adjudicatory function in the appellate review or the less formal roles carried out by the Board of Visitors. To avoid any potential challenges either one role or another should be performed.

9.14 Mr Cooper concludes:

“There are also concerns that, by carrying out an appellate function in relation to disciplinary matters in the prison, the Board of Visitors is unable to guarantee an independent and impartial tribunal. This is because the same Jurat may have convicted and sentenced an inmate whose disciplinary appeal they then sit on. That Jurat sitting as a member of the Board of Visitors may also have information about the inmate acquired as a result of their complaint and monitoring function within the prison. Both of these issues may give rise to an appearance of lack of impartiality if not partiality itself. Finally, Jurats acting as members of the Board of Visitors in this appeal capacity may not have the requisite qualifications or professional status as a judge to carry out this role effectively in the absence of independent legal advice.”

Article 14: Prohibition of discrimination

9.15 Article 14 of the Human Rights (Jersey) Law 2000 states that: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

9.16 Mr Cooper’s advice explains that discrimination concerns may also be raised as a consequence of the Board of Visitors’ multiple functions. These could include issues arising out of members of the Board sitting on the disciplinary appeals of those they have already sentenced and/or advised in their pastoral capacity as prison monitors. Discrimination could also occur as a result of the non-professional nature of the Board of Visitors, the members of which may be ill-equipped to identify and deal with questions of discrimination.

⁸⁰ *Campbell & Fell v UK* (1984)

⁸¹ *Ezeh & Connors v UK* (2002)

Article 13: Right to an effective remedy

- 9.17 Article 13 of the ECHR states: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*
- 9.18 Mr Cooper’s advice states: *“Because the Board of Visitors, in their prison monitoring capacity, can provide a remedy under certain circumstances they are crucial to the scheme of Article 13 and Jersey’s human rights protection. In many respects they should see themselves as human rights defenders. As a consequence, anything that undermines the role of the Board of Visitors has the effect of weakening Article 13 protection in Jersey. Therefore the arguments already raised in relation to Articles 3, 6, and 14, will also apply to Article 13.”*

KEY FINDING

- 9.19 Based on the legal advice received from Mr Cooper, the Sub-Panel is concerned that the multiple functions of the Board of Visitors are not compatible with Jersey’s international human rights obligations or the Human Rights (Jersey) Law 2000. It is not satisfactory that as a result of the perceived or actual conflicts of interest within the Board of Visitors that the Board is less effective in monitoring the prison and carrying out its vital role in preventing ill treatment within the prison.

RECOMMENDATIONS

- 9.20 The legal advice received from Mr Cooper further supports the Sub-Panel’s previous recommendation that membership of the Board of Visitors should not be limited to Jurats.
- 9.21 The legal advice from Mr Cooper recommended that the appellate role of the Board of Visitors should be hived off as a discrete part of the role of the Jurats. This issue should therefore be fully considered by the Minister in any future reconstitution of the Board of Visitors.

10. UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

- 10.1 The ratification of the UN Convention against torture and other cruel, inhuman and degrading treatment was extended to Jersey in 1992, following the implementation of the Torture (Jersey) Law 1990.
- 10.2 Following the UN Convention against torture, the OPCAT was adopted by the United Nations General Assembly on 18th December 2002, and subsequently entered into force in June 2006. The purpose of the OPCAT is described as *‘an instrument designed to assist states to prevent incidences of torture and other forms of ill-treatment by establishing a system of regular visits to places of detention by expert bodies.’*⁸² The OPCAT is open for signature, ratification and accession by states that have ratified the Convention against Torture.
- 10.3 The OPCAT therefore requires States Parties to designate or establish a body called a ‘National Preventive Mechanism’ (NPMs) with responsibility for conducting regular visits to all places within that jurisdiction where people are deprived of their liberty.
- 10.4 In terms of Jersey’s commitments, the Island has also had ratification of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment extended in 1988, together with Protocols 1 and 2 in 1994. The difference between the European Convention and the UN Convention is as follows:

*“The European convention applies a more stringent regime of mandatory and ad hoc visits than envisaged under the Optional Protocol to the UN convention, but does not require a system of regular visits by national bodies.”*⁸³

- 10.5 On the 25th October 2004 it was confirmed by way of a letter from the Bailiff to the Lieutenant Governor that although Jersey was supportive of the Optional Protocol, it did not wish to have the Protocol extended to the Island. The reason given was that there would be significant resource consequences, practical difficulties, and constitutional issues arising were the Optional Protocol to be extended to Jersey. However, this response did re-affirm that the European Convention for the Prevention of torture and inhuman or degrading treatment or punishment extends to the Island. It was further confirmed that should the UN Sub-Committee or its

⁸² <http://www.apt.ch/content/view/44/84/lang.en/>

⁸³ Policy and Resources Committee Report 20th November 2003 (Agenda Item: A5)

members wish to visit the Island they would be granted full access to places of detention, as well as highlighting that the Island would be pleased to invite the UK National body to make an inspection of places of detention within the Island. The Island's position was subsequently reaffirmed in a further letter from the Bailiff dated the 17th July 2007.

10.6 Mr Cooper's advice to the Sub-Panel made the following statement:

"Because of the special nature of the problems facing Jersey's prison community, it might be worth considering inviting the Committee [Committee of the European Convention for the Prevention of Torture or Inhuman and Degrading Treatment or Punishment (CPT)] to Jersey to engage in a dialogue with the authorities and for the Jersey authorities to seek to address issues of concern before they become problems. Another option might be to draw on the expertise of the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment."

KEY FINDING

10.7 The Sub-Panel recognises the reasons behind the Island not wishing to be signed up to OPCAT. However, it is considered that as the Island has confirmed its support for the principles behind the Convention, should the Board of Visitors be reconstituted, it should be with a view to complying with the principles of OPCAT.

RECOMMENDATION

10.8 The Sub-Panel recommends that the Minister for Home Affairs should fully consider the principles and the requirements of the OPCAT when considering any future reconstitution of the Board of Visitors. As the OPCAT extends to all places of detention the Sub-Panel further recommends that the Minister should additionally consider the potential benefits of an over-arching body being formed that would cover all places. The Panel believes this to be particularly relevant in the current context of there being no unannounced visits made by the Board of Visitors.

10.9 The Sub-Panel further recommends that the Minister for Home Affairs should consider inviting international experts to the Island, to discuss the most effective mechanisms for prison monitoring in the context of a small Island community. Such individuals could include the Committee of the European

Convention for the Prevention of Torture or Inhuman and Degrading Treatment or Punishment (CPT) or the UN Special Rapporteur on Torture.

11. Appendix 1 – Panel Membership and Terms of Reference

11.1 For the purposes of its review, the Education and Home Affairs Scrutiny Panel established the following Sub-Panel:

Deputy M. Tadier, Chairman

Connétable J. Le Sueur Gallichan

Deputy T.M. Pitman

11.2 The Panel in itself comprised the following members:

Deputy R.G. Le Hérissier, Chairman

Deputy T.M. Pitman, Vice-Chairman

Connétable G.F. Butcher

Deputy M. Tadier

11.3 The following Terms of Reference were established for the review:

1. To review the role and responsibilities of the current Prison Board of Visitors.
2. To consider any work undertaken by the Minister for Home Affairs on issues arising in relation to the Board of Visitors.
3. To consider the position in other jurisdictions.
4. To review whether current arrangements with regard to the Board of Visitors are acceptable.
5. To examine any further issues relating to the topic that may arise in the course of the Scrutiny Review and which the Panel considers relevant.

12. Appendix 2 – Evidence Considered

12.1 The following documents are available to read on the Scrutiny website (www.scrutiny.gov.je) with the exception of those documents that were provided to the Sub-Panel on a confidential basis.

Documents

1. Prison (Jersey) Law 1957
2. Prison (Board of Visitors) (Jersey) Regulations 1957
3. Independent Monitoring Board Reference Book
4. Social Affairs Panel Public Hearing Transcript, Friday 12th May 2006
5. The Prison Administration (Guernsey) Ordinance, 1998
6. Prison Act 1952 (c.52)
7. Prison Board of Visitors Annual Reports: 1995; 1996; 1997; 1998; 1999; 2001; 2002; 2003; 2004; 2005; 2007
8. Prison (Jersey) Rules 2007
9. Prison Board of Visitors Jurats Reports and Minutes (*confidential*)

Written Submissions

- | | | |
|----|----------------|-----------------------------|
| 1. | Mr. M. Fennell | 5th March 2009 |
| 2. | Mr. R. Pittman | 10 th March 2009 |

Public Hearings

- | | | |
|----|---|-----------------------------|
| 1. | Senator B.I. Le Marquand
Mr. B. Millar, Governor, HMP La Moye | 26 th March 2009 |
| 2. | Mr. R. Pittman | 26 th March 2009 |
| 3. | Prison Board of Visitors :

Jurat J. Tibbo (Chairman, Prison Board of Visitors)

Jurat Mrs. J. Clapham

Jurat J. Le Breton

Ms. A. Le Brocq-Davis (Secretary, Prison Board of Visitors) | 2 nd April 2009 |