

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Education and Home Affairs Scrutiny Panel



Prison Board of Visitors

Presented to the States on Thursday 26th November 2015

S.R.9/2015

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1. TERMS OF REFERENCE AND PANEL MEMBERSHIP

1. To test the current validity of Recommendation 7.19 of the Education and Home Affairs Scrutiny Panel report on the Prison Board of Visitors (S.R.7/2009), requiring the Minister for Home Affairs to open the constitution of the Prison Board of Visitors to independent members of the public.
2. To obtain evidence from the public and other stakeholders.
3. To hold public hearings with the Minister for Home Affairs and any other individuals or organisational representatives considered necessary.
4. To report to the States Assembly with the Panel's findings and any recommendations arising from the evidence.

The Education and Home Affairs Scrutiny Panel
comprised the following members:



Deputy J. M. Maçon, Vice-Chairman



Deputy L. M. C. Doublet,
Chairman



Deputy S. Y. Mezec

2. LEAD MEMBER'S FOREWORD

Shortly after this Education and Home Affairs Scrutiny Panel was appointed after the October 2014 general election, we set about identifying which areas we could review and potentially have a positive impact on. After representations made to the Panel by Deputy Tadier (who had previously chaired a Sub-Panel which considered this subject) we decided that it was worth briefly revisiting the area of the constitution of the Prison Board of Visitors to investigate whether any important developments had occurred since the States had a tied vote on the subject in 2009.

Soon into our work we began to realise that there had been some material changes in legal opinion concerning the human rights implications of monitoring boards for people held in detention by the state.

The subject of Human Rights is one which rightly inspires a variety of strong opinions on a whole range of subjects and getting the balance right is a difficult task for any government, but in particular it can pose challenges for a small community such as Jersey.

The current Government of Jersey has made its intention clear that it wishes to abide by internationally recognised principles of Human Rights and is seeking to sign up to more conventions and protocols as and when it becomes appropriate.

In particular the government has indicated that it is currently aspiring to sign up to the 'Optional Protocol' for the United Nation's Convention against Torture (OPCAT). This aspiration is made all the more pressing by the fact that the Isle of Man has already signed up to it and Guernsey is also taking steps towards meeting the criteria so that it can sign up too. Jersey therefore risks falling behind the other Crown Dependencies unless we take steps to meet the necessary criteria to enable us to sign up to OPCAT.

After examining the wording of the Optional Protocol and discussing its implications with the Chief Minister at a public hearing, it became abundantly clear that it is impossible for Jersey

to comply with OPCAT unless a monitoring board is established which is completely independent of the judiciary.

States Members will of course be entitled to the opinion that preserving one small aspect of the role of the Jurats is more important than Jersey signing up to OPCAT, however the evidence we reviewed led us to conclude that it is impossible to do both.

On behalf of the Panel I would like to thank those who have contributed to this review in giving evidence, either orally or in writing, the Governor and staff at HMP La Moye for their assistance and our officer for his hard work and support throughout this review.

Signed

A handwritten signature in black ink, appearing to read 'S. Y. Mezec', written in a cursive style.

Deputy S. Y. Mezec

3. RECOMMENDATION

Recommendation

7.8. That the Chief Minister, within his work preparing the Island to meet the conditions required for OPCAT, takes a proposition to the States that removes the Jurats from the Prison Board of Visitors and replaces them with independent members.

4. INTRODUCTION

The Prison Board of Visitors

- 4.1. Article 6 of the Prison (Jersey) Law 1957, requires that the States shall make Regulations providing for the constitution of the Prison Board of Visitors. That board will consist of Jurats of the Royal Court, appointed by the Superior Number of the Royal Court.
- 4.2. The role and responsibilities of the Board of Visitors are prescribed by the Prison (Board of Visitors) (Jersey) Regulations 1957.¹
- 4.3. Additionally, Rule 94 of the Prison (Jersey) Rules 2007 allow prisoners to appeal, in writing, to the Chairman of the Board of Visitors against a breach of discipline.
- 4.4. As outlined by the Regulations, the Board of Visitors consists of no less than 7 Jurats of the Royal Court.

That board will consist of Jurats of the Royal Court

Original Involvement of Scrutiny

- 4.5. On 18th August 2009, an Education and Home Affairs Scrutiny Sub-Panel, Chaired by Deputy Tadier, presented to the Assembly Scrutiny report No. SR7/2009, Prison Board of Visitors². The report dealt at length with matters surrounding the Prison Board of Visitors. One of the recommendations within the report was centred around the requirement within the Prison (Jersey) Law 1957 and the Prison (Board of Visitors)(Jersey) Regulations 1957, for the Board of Visitors to consist of at least 7 Jurats. The Sub-Panel made a recommendation that:

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

¹ From this point forward 'Regulations' means the 'Prison (Board of Visitors) (Jersey) Regulations 1957

² SR7/2009, Prison Board of Visitors may be found on the Scrutiny website

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.

4.6. The Minister agreed with the recommendation at the time.

4.7. In addition to the above recommendation, SR7/2009 dealt in significant detail with the Prison Board of Visitors, covering the following areas:

- The role of the Prison Board of Visitors
- Responsibilities of the Prison Board of Visitors
- Visits and meetings of the Board of Visitors
- Dealing with prisoners' complaints
- Attendance at serious incidents
- The Jurats' willingness to publicly raise issues arising from the prison
- Meetings with the Minister for Home Affairs
- Training
- The position in other jurisdictions
- The Isle of Man
- Guernsey
- England and Wales
- The current constitution of the Board of Visitors
- Meetings with prisoners at HMP La Moye
- Human Rights Compliance
- UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

SR7/2009 dealt in significant detail with the Prison Board of Visitors

4.8. A question about the progress was brought to the States by then Deputy R.G. Le Hérissier, in 2011, by which time no changes had been made. So the Education and Home Affairs Scrutiny Panel lodged a proposition in the States to push that change through. P.84/2011 was Lodged au Greffe on 31st May 2011 suggesting that the

composition of the Prison Board of Visitors should be amended to provide that independent members of the public should be permitted to sit on the Board.

- 4.9. The Minister at that time, Senator Le Marquand, submitted comments to the States supporting the change. However, during the debate, he stated that he had received conflicting advice on the issue and had changed his position to oppose the change. He voted against the proposition. The vote was 19 'Pour' and 19 'Contre' with one Member abstaining from making a decision.
- 4.10. As is required by Standing Orders, the proposition was therefore lost and no changes were introduced. As a result of the Minister's change of position, the entire Scrutiny Panel resigned and the tied vote of the States has left the matter unresolved to this date.

Current Involvement of Scrutiny

- 4.11. At the first meeting of the States following the elections in 2014, Deputy Tadier asked the Chairman of the new Education and Home Affairs Scrutiny Panel whether the Panel intended to undertake a follow-up on recommendation 7.19 of S.R.7/2009 Prison Board of Visitors. The recommendation required that a new system be implemented by the Minister for Home Affairs. The recommendation required independent members of the public be permitted to sit on the Prison Board of Visitors. The answer, provided by the Chairman, Deputy L. Doublet, was that the matter had not been considered and that there was no intention at that time to undertake any work on the issue. However, the Chairman invited Deputy Tadier to address the Panel on this issue.



Deputy M. Tadier

- 4.12. At its meeting of 4th December 2014, the Panel welcomed Deputy Tadier who gave a presentation to the Panel on the details behind the question he had asked. He maintained that there was precedence towards the use of lay people within such visiting boards, as displayed in the States of Jersey Police

Independent Custody Visitors Panel. Jurats, who made up the current membership, were conflicted in their role because they were a part of the judiciary, and more importantly, had, in some cases, administered justice to offenders at their trials. This potentially made them very unapproachable from the point of view of the prison population. The Panel was invited to consider presenting a proposition to the States requesting that the Minister make such changes as necessary to open the board to lay members.

- 4.13. This Panel therefore agreed to draft a proposition and charged Deputy Mezec with leading the work. The Panel recognised that it would not be appropriate use of public resources to re-do all the work done by the previous Scrutiny Panel. However, SR7/2009 was drafted in 2009 and it was considered that it would be sensible to confirm that matters relating to the report had not changed, in particular, relating to the constitution of the Prison Board of Visitors constitution.
- 4.14. In March 2015, the Panel launched a review to examine the constitution of the Prison Board of Visitors.
- 4.15. The Terms of Reference that would allow the Panel to undertake that work were:
 1. To test the current validity of Recommendation 7.19 of the Education and Home Affairs Scrutiny Panel report on the Prison Board of Visitors (S.R.7/2009), requiring the Minister for Home Affairs to open the constitution of the Prison Board of Visitors to independent members of the public.
 2. To obtain evidence from the public and other stakeholders.
 3. To hold public hearings with the Minister for Home Affairs and any other individuals or organisational representatives considered necessary.
 4. To report to the States Assembly with the Panel's findings and any recommendations arising from the evidence.

5. PROCESS

Current Review

- 5.1 The review process undertaken by Scrutiny Panels and the Public Accounts Committee is guided by the Code of Practice. Having decided on the terms of reference, the scoping documents were approved by the Chairmen's Committee and the Panel informed the Minister for Home Affairs of the new review.
- 5.2 The Media were advised and a call for evidence was made.
- 5.3 Other jurisdictions were discussed, however as there was significant information contained within the previous report, S.R. 7/2009, it was simply confirmed that there had been no significant changes within those jurisdictions.
- 5.4 The Panel undertook a visit to the prison where the Governor advised the Panel that prisoners were generally content with the current system because the Jurats provided a direct line into, and experience of, the justice system. This confirmed to the Panel that some work was needed to establish what the views of prisoners actually were.
- 5.5 The Panel produced a questionnaire which was presented to every prisoner. (See appendix 1), the intention being to obtain an indicative perception of how the prisoners felt. The response was high with approximately 50% of prisoners responding.
- 5.6 The results were collated and found to be as follows:



Column1	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	Not sure
The Prison Board of Visitors should be made up of 7 Jurats	4	2	7	43	6
The Prison Board of Visitors should be made up of both Jurats and laypersons	17	10	6	28	2
The Prison Board of Visitors should be made up of just laypersons	32	5	8	11	7
Having Jurats on the Board of Visitors makes me less likely to talk to them about an issue	30	9	5	13	5
Having laypersons on the Board of Visitors would make me more likely to talk to them about an issue	40	10	2	6	5
It is a problem that Jurats are on the Prison Board of Visitors because they are involved in trials and sentencing	44	2	5	8	3
It is good to have Jurats on the Prison Board of Visitors because they have access to lawyers and know about the judicial system	8	12	6	33	4

2. Were Jurats involved in your sentencing?

Yes	No	Not sure
49	6	5

3. Have you contacted the Board of Visitors about any issues during your time in Prison?

Yes - more than once	Yes - once	No
12	12	36

3b. If you have answered yes, generally how satisfied are you with the response of the Board of Visitors to you issue(s)?

Very satisfied	Fairly satisfied	Not very satisfied	Not at all satisfied
1	3		19

- 5.7. Most prisoners who responded did not agree that Jurats should be on the Board of Visitors. The larger majority of respondents:
- had been sentenced by Jurats,
 - had not had contact with the Board of Visitors and
 - where they had been contact, they were not satisfied with the results.

Public Hearing with the Minister for Home Affairs

- 5.8. On 20th April 2015, the Panel held a public hearing with the Minister for Home Affairs. The Minister maintained during the hearing, that the constitution of the Board of Visitors is a subjective point given that the States saw a tied vote following the debate of P.84/2011. She maintained that this was also reflected in the differing legal opinions that were received. Further, the Minister considered that it was probably precipitous for her to share her personal (Ministerial) views with the Panel as she did not want to guide the Panel in one way or another.
- 5.9. The Minister informed the Panel that she saw the suggested problems of the Jurats being on the Board of Visitors as an issue of perception and that there was a hope that the Panel's review might enable her to combat that perception or make it clearer.
- 5.10. The Panel considered a comment made by the Assistant Minister for Home Affairs at that same hearing was worthy of note:

“We know that if evidence is produced which merits potential change, then that must be considered but I think it is all about recommendations from a panel that are based on evidence and not hearsay. We all know that, so we would expect your recommendations to be based upon evidence that you can produce to us.”

- 5.11. The Panel was of the opinion that the Minister did not recognise the conflict of interest and was not committed to change at that point.

Freedom for Life

- 5.12. Evidence was received from a representative of the charitable organisation, ‘Freedom for Life’. The organisation considered the Board of Visitors to be ‘toothless’, to hold insufficient authority, and to be ineffective in dealing with issues that are important to prisoners.



- 5.13. Overall, an independent authority would be a good conduit for prisoners to be given information that helps them understand why a perceived ‘injustice’ in prison life has happened. (Such as delays in single cell allocation, work placements etc.)
- 5.14. The role of visiting Judiciary should be ‘in addition to’ independent visitors. Whilst the charity considers the current prison regime to be well run, it does not see the Board of Visitors as being independent.

The Jurats

- 5.15. By the nature of the role of a Jurat, the functions are statutory and do not suffer the excesses of change that many other roles within the States have experienced in recent years.
- 5.16. In 2009, the Sub-Panel spoke to Jurat Clapham at a public hearing and established that the Board of Visitors saw it as their duty to highlight any problems at La Moye,

both with prisoners and with the conditions there. The Sub-Panel received correspondence from Jurat Tibbo, confirming that the Board of Visitors produces an Annual Report. The Scrutiny Report of 2009 discusses the position as it was at that time.

- 5.17. The Panel believes that in 2015, there has been no significant changes in the manner that the Board of Visitors operates since 2009.



Administration

- 5.18. The Prison Board of Visitors is administered from within the Judicial Greffe. Therefore, whilst there are costs associated with the function of the Board, they are minimal and absorbed into the budget of the Judicial Greffe. It is not envisaged that any change to the constitution of the Panel would significantly alter those arrangements or costs.

6. UNITED NATIONS

The UN Convention against Torture

6.1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

6.2. The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe they will be tortured.

6.3. Since the convention's entry into force, on 26 June 1987, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted as a principle of customary international law.^[5] As of May 2015, the Convention has 158 state parties.



6.4. This Convention sets minimum standards that permits a majority of countries to sign up to and Jersey has already signed up to it. However, an 'Optional Protocol' raises the bar somewhat in relation to the human rights and prevention of torture etc. that countries might sign up to for a fuller protection of its citizens.

The Optional Protocol

6.5. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which has been in existence since 22

June 2006, provides for the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

- 6.6. As stated in the title, this is an optional protocol and one that jurisdictions such as Jersey make a conscious decision to sign up to.
- 6.7. The main impact of this Optional Protocol is that Jersey will need to provide a system of regular visits by independent bodies to places where people are deprived of their liberty and those bodies are overseen by a single national preventative mechanism.



6.8. In 2003, the Policy and Resources Committee looked at the Optional Protocol which had only become available for jurisdictions to sign up to in 2002. At that time Crown Dependencies were concerned about the language used in the protocol relating to 'a single national preventative mechanism'. A single 'national' mechanism was seen as impossible for Jersey to sign up to due to the concerns surrounding a single visiting body throughout the British Isles for everyone in prison

detention, police detention or mental health detention. The Scrutiny Report of 2009 discusses the position as it was at that time.

- 6.9. In the time between 2009 and 2015, countries around the world have increasingly signed up to OPCAT. It has become clear that the 'national preventative mechanism' can be a combination of visiting bodies, and different bodies may be tailored to each of those requirements as long as that is co-ordinated within the jurisdiction and reported on as a whole annually by the 'national preventative mechanism'. Jersey can provide independent boards to visit areas of detention and report back to the Jersey 'national mechanism'.

- 6.10. The Isle of Man has undertaken this work and Guernsey is preparing to do so.
- 6.11. In view of the different mechanisms to those which currently exist, the most important consideration within any change which allows Jersey to comply with OPCAT will be the introduction of ‘independent’ visiting bodies. It is clear that any such board would have to be completely separate from the function to which they are visiting. For example, you would not have an independent board visiting a mental health facility where the board is made up of nurses and doctors.
- 6.12. In exactly the same manner, it would be unreasonable to consider serving or indeed retired Police Officers to be independent when visiting people in Police detention or a Prison population. Those involved in the judiciary are equally conflicted in regards to a board which visits prisoners.
- 6.13. The Panel held a public hearing with the Chief Minister who confirmed that the Island was moving towards meeting the requirements of OPCAT. The treaty extension process requires that jurisdictions complete a compliance matrix, amongst other levels of verification, to show that the required standards are being observed.
- 6.14. The Chief Minister explained :

“Jersey is the only jurisdiction in the British Isles that has Prison Board of Visitors formed of judges and there is not anywhere else in the British Isles that maintains that position. Some other places in the British Isles did have a similar position but as they have moved towards OPCAT compliance, that has been replaced”

“Jersey is the only jurisdiction in the British Isles that has Prison Board of Visitors formed of judges...”

7. CONCLUSION

- 7.1. This Scrutiny Panel recognises the good work being done by the current Board of Visitors and would like to take the opportunity to thank all Jurats for the work they do for the community, including the prison population.
- 7.2. It also recognises that Jersey has some unique traditions. Its judicial systems, perhaps, being part of those traditions. Further, that some may see arguments against changing what is 'not broken'. In other words, don't change this for the sake of change.
- 7.3. During the public hearing with the Minister for Home Affairs, it was stated that any conflict perceived of the function of Jurats within the Prison Board of Visitors, was subjective and the Panel needed to evidence the argument against that, should it wish to instigate any changes. As this is one of the prime functions of Scrutiny, the Panel accepted that argument. The Minister displayed a lack of interest in bringing forth the change.
- 7.4. Whilst examining the evidence, it was established that this change was going to have to happen to meet the conditions of OPCAT. At the public hearing held with the Chief Minister, he confirmed beyond doubt that the Board of Visitors would have to be completely independent to meet the requirements of OPCAT. The Panel noted that a working party was being created to examine all the requirements and changes needed to comply with OPCAT and any changes proposed would have to be approved by the States Assembly.
- 7.5. Therefore, all other arguments aside, and however good a job that may have been done by the Jurats to date, if Jersey is to sign up to OPCAT, Jurats simply cannot be part of the constitution of the

The Chief Minister confirmed beyond doubt that the Board of Visitors was going to have to be completely independent.

Prison Board of Visitors. The conflict relating to their independence would prevent Jersey signing up to OPCAT.

- 7.6. Whilst the Panel initially looked at lodging a proposition to allow lay-persons onto the Board of Visitors to work alongside Jurats, it is very clear now that Jurats are conflicted because they are not independent.
- 7.7. In view of the evidence relating to OPCAT, the Panel makes the only recommendation available to it, that the Chief Minister, within his work preparing the Island to meet the conditions required for OPCAT, takes a proposition to the States that removes the Jurats from the Prison Board of Visitors and replaces them with independent members.

Recommendation

7.8 That the Chief Minister, within his work preparing the Island to meet the conditions required for OPCAT, takes a proposition to the States that removes the Jurats from the Prison Board of Visitors and replaces them with independent members.

APPENDIX I

Questionnaire

Education and Home Affairs Scrutiny Panel**Dear participant,**

The Education and Home Affairs Scrutiny Panel is undertaking a review into the make-up of the Prison Board of Visitors.

The Prison Board of Visitors is currently made up of 7 Jurats.

The views of prisoners at the prison are important to this review.

Please could you fill in this questionnaire and place it into the secure box for the Prison Board of Visitors.

Your response will remain anonymous.

1. How much do you agree or disagree with each of the following statements?

<i>(please tick one answer for each row)</i>	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	Not sure
The Prison Board of Visitors should be made up of 7 Jurats.	<input type="radio"/>				
The Prison Board of Visitors should be made up of both Jurats and laypersons.	<input type="radio"/>				
The Prison Board of Visitors should be made up of just laypersons.	<input type="radio"/>				
Having Jurats on the Board of Visitors makes me less likely to talk to them about an issue.	<input type="radio"/>				
Having laypersons on the Board of Visitors would make me more likely to talk to them about an issue.	<input type="radio"/>				
It is a problem that Jurats are on the Prison Board of Visitors because they are involved in trials and sentencing	<input type="radio"/>				

Education and Home Affairs Scrutiny Panel

It is good to have Jurats on the Prison Board of Visitors because they have access to lawyers and know about the judicial system.



Please turn over

2. Were Jurats involved in your sentencing?

- Yes
- No
- Not sure

3. Have you contacted the Board of Visitors about any issues during your time in prison?

- Yes – more than once
- Yes – once
- No

3b) If you answered yes, generally how satisfied are you with the response of the Board of Visitors to your issue(s)?

- Very satisfied
- Fairly satisfied
- Not very satisfied
- Not at all satisfied

Do you have any other comments?

Please return this form in the enclosed envelope and post in
the
Prison Board of Visitors post-box.

The results of this survey will be published within the
Scrutiny report on the Prison Board of Visitors which is
expected to be published in the third quarter of 2015.