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The government's response to the Harris Review into self-inflicted deaths in National Offender Management Service custody of 18-24 year olds

Introduction

In February 2014 the Justice Secretary announced an independent review into Self-inflicted Deaths in Custody of 18-24 year olds. The review, chaired by Lord Harris of Haringey and subsequently referred to as the Harris Review, started on the 1st of April 2014 and published its completed report Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds on 1 July 2015.

The purpose of the review was to make recommendations to reduce the risk of future self-inflicted deaths in custody. The review focused on a variety of issues, including vulnerability, information sharing, safety, staff prisoner relationships, family contact, and staff training. In total the review made 108 recommendations categorised as fundamental, primary or secondary.

In December 2015 the government published its response to the Review's report and recommendations. This briefing provides detail on the government's response and the future plans it sets out in relation to key areas which are policy priorities for Clinks and which our members and the wider sector work on. Please note that the Harris Review and the government's response is extensive and as such we have only been able to offer a summary of some key points below. For further information we suggest you refer back to the original documents.

The purpose of prison and wider reform of the prison system

The fundamental recommendation of the Harris Review is that the:

"MoJ must publish a new statement setting out that the purpose of prison is to hold safely and securely those people sent there by the courts, either because they have been sentenced to imprisonment or because they have been remanded in custody while awaiting trial or sentencing. A prison should provide to those in custody a regime whose primary goal is rehabilitation. The penalty of imprisonment is the removal of liberty; all persons deprived of their liberty shall be treated with respect for their human rights (including the European Convention on Human Rights) and their individual protected characteristics (as defined by the Equality Act 2010). Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which those restrictions are imposed. Life in prison should approximate as closely as possible the positive aspects of life in the community."

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The government has indicated that it agrees with this recommendation. In his foreword to the government's response Michael Gove states that:

"Offenders are rightly sent to prison as a punishment, not for further punishment... Reducing rates of violence, self-harm and deaths in custody in all forms of custody is a Ministerial priority and I am determined to ensure that we build a prison system that has a renewed focus on rehabilitation."

The response indicates that the Ministry of Justice will set out bold reform proposals in 2016 based on the principles of "ensuring prisoners can maintain strong family ties, participate in work and education, and look to the future with ambition whilst giving more freedom to governors". A number of the recommendations in the Harris Review will be considered as part of these reform proposals. For example, the recommendations on changing the Incentive and Earned Privileges Scheme, or whether young adults should be held in separate or mixed institutions, or how you improve contact with families using internet based video services.

The response to the Harris Review makes it clear that these reform proposals will need to tie in with the findings from Dame Sally Coates' review of prison education, as well as findings from the review of the youth justice estate by Charlie Taylor. It is also likely that the review into the care and management of transgender offenders (announced on 8 December) and the review into racial bias in the CJS (announced on 31 January) will also impact on future reforms in this area. All of these reviews are underway and are expected to report in 2016/7.

Equality groups in the Criminal Justice System

The Harris Review doesn't make any specific recommendations in relation to groups with protected characteristics under the Equalities Act (2010) but it does highlight some key considerations for meeting the needs of young adult women and addressing the over-representation of Black, Asian and minority ethnic (BAME) people in the CJS.

Women require a distinct approach

Only two cases in the cohort examined by the Harris Review were female and as such it was unable to identify specific trends or themes in relation to young adult women. However it and others, including Clinks¹, have highlighted the particular needs of young women in contact with the CJS.

The government's response examined the available evidence and concluded that young adult women's needs are similar to those of adult women. As such the National Offender Management Service (NOMS)' Better Outcomes for Women Offenders document, published in September 2015, informs the commissioning of services for this group. The response also notes the higher levels of self-harm amongst female prisoners and states that it is driving forward a range of work to improve support for female offenders by developing therapeutic environments and implement staff training on trauma informed practice.

Addressing the over-representation of Black, Asian and minority ethnic prisoners

The Harris review's cohort were more likely to be white, a statistic that goes against other trends in the Criminal Justice System which show that prisoners from BAME backgrounds experience poorer outcomes than their white counterparts.

The government's response recognises the disproportionate numbers of BAME prisoners and that they report significantly poorer responses than non-BAME prisoners regarding their treatment by prison staff. It points to the government's support for the Young Review

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and commits to continue to work with it to address these issues. In particular the response highlights the fulfilment of The Young Review's recommendation for NOMS to publish its equality strategy, which was launched on 9 October 2015. The equality strategy will improve data collection and monitoring to gauge equality of outcome at different stages of offender management, from court onward. As one of the original partners to convene the Young Review, along with the Black Training and Enterprise Group, Clinks welcomes this response.

Recommendation: Recognising the maturity of young adults

Since 2009 Clinks has been an active member of the Transition to Adulthood (T2A) Alliance to highlight and advocate for a distinct and effective approach to working with young adults (18-24 year olds) in the Criminal Justice System. This includes a focus on how maturity and brain development should be taken into account when deciding on interventions for this group. The Harris Review received a range of evidence in relation to this and asserted that maturity is a better guide to a young person's transition into adulthood than their chronological age.

The Harris Review recommended that there should be legal recognition of the concept of maturity in order to ensure that it is a primary consideration in decisions relating to diversion, sentencing and how a young person should be accommodated where a custodial sentence is necessary.

The government's response states that it does not agree that legislation should currently be considered which legally recognises the concept of maturity. It says that maturity is recognised in Liaison & Diversion services which identify vulnerabilities, and as a mitigating factor in sentencing guidelines and that prison accommodation for young adults will be considered as part of the wider prison strategy. In addition the government will issue revised guidance in Spring 2016 which will state that pre sentence reports completed on 18-24 year olds must include consideration of maturity and testing and screening tools for maturity will become available for use by the prison and probation service in Autumn 2016.

Recommendation: Transition from youth to the adult custody and probation services needs improvement

As has been previously highlighted by the T2A Alliance, the Harris Review noted the significant challenges presented by the transition from the secure youth estate and youth services to the adult system and the support young adults need during this process.

The government's response recognises these challenges and states that it will review NOMS' Transitions Protocol, which set out the process for those going through this transition, and reissue it as a mandatory instruction in Autumn 2016.

Recommendation: Better support for Care Leavers in prison

The Harris Review was concerned with the lack of support that care leavers in custody have from family and responsible adults outside of the prison system.

The government's response signals its ambition for care leavers to receive the level of support from their local authority that other young people receive from their parents. However many offenders are reluctant to reveal their care leaver status and as such both care leavers, prison and probation staff are often unaware of their entitlements. Therefore the government is considering how to reassure prisoners about declaring their status and give staff the required skills to ask about care experiences. NOMS have appointed national and regional care leavers champions to "share effective practice and promote the care leavers agenda across the prison estate".

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Recommendation: Improving the youth justice system

A number of the Harris Review recommendations related to the Youth Justice Board and Youth Offending Services.

The government's response points to the review of youth justice led by Charlie Taylor. This review will be informed by the Harris Review's findings and as such the government does not plan to take forward any of the Harris Reviews recommendations in this area until the Taylor Review has reported².

Staffing and training

Recommendation: Offender Management model and the proposed CARO officer

The Harris Review recommended a new specialist role of Custody and Rehabilitation Officer (CARO). This role would require a social work or professional youth work qualification and work specifically with young adults in custody, with a case load per officer of 15-20.

The government's response disagrees with the need for a specialist role of this kind. It states that all staff are responsible for the care and support of prisoners and that the CARO role might cut across specific casework functions under the Offender Management model. Instead the government outlines that "training and effort should be focussed on equipping existing staff, who know the offender best, to spot changes in behaviour that might indicate increased suicide risk, rather than diverting effort and resources to create a new additional role."

In addition the government states that the Offender Management Model has recently been reviewed and that this is being considered as part of wider prison reform. "A greater emphasis will be placed on staff having dedicated time to engage with prisoners, in order to develop positive, supportive relationships and to be alert to welfare needs".

Recommendation: Staff numbers and resources

The review raised concerns about resourcing in prisons and whether staffing and benchmarking levels allow for full compliance with Prison Service Instructions that concern the safety and well-being of prisoners and called for those levels to be immediately reviewed. The government's response states that the benchmark level has been designed to be safe, decent and secure.

Recommendation: Enhanced training for prison staff

The Harris Review recommended training in maturity issues that impact on young adults. Indeed the length, quality and content of the training provided to prison staff is a recurring theme in many reports.

The government's response agrees that staff training and skills are vital to rehabilitating and caring for those in prison. It asserts that an extensive learning offer is in place for all prison staff and in particular highlights that all new officers receive training in mental health awareness and safer custody. However in recognition of the complexity of the prison officer role, the entry level training has been reviewed and from January 2016 a new 10 week entry level training course will be introduced. The response emphasises that this a 25% increase in the length of the course. However, given the complexity of needs in the prison population and the level of vulnerability amongst some prisoners an increase from 8 weeks of training to 10 weeks could still be viewed as relatively low.

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Safety

Recommendation: Improvement of 'assessment, care in custody and teamwork' processes

The Harris Review described the assessment, care in custody and teamwork (ACCT) process as thorough and comprehensive but raised concerns about its implementation, and noted that it focused too much on procedure and not enough on care.

The government's response has been to conduct a review of the use of ACCT with a focus on compliance and the quality of care delivered through the process. A summary of the findings and recommendations of the review will be published in summer 2016 and a number of improvements, including tools to assist staff and a revised policy document will also be put in place.

Recommendation: Safer cells

The Harris Review raised concerns that the data on safer cells held by NOMS is incomplete. The government's response is to commit to improving this data in early 2016 and to consider the policy and maintenance implications of their use in the context of wider improvements to the prison estate, including the 9 new prisons planned.

Peer support, family and friends

The Harris Review noted that contact with family and friends is often a protective factor for those in prison. This is a key issue that Clinks' members have raised many times including through our current work to provide a collective voice to organisations that support the families of prisoners³.

The government's response recognises the importance of supporting family relationships in reducing reoffending and tackling intergenerational offending and refers to its full time Family Engagement Workers at all public sector female prisons and the pilot of a community based model with probation.

Recommendation: Maintain family visits for all

The Review recommended that visits should not be withdrawn as part of punishment, Incentives and Earned Privileges (IEP) or restrictive regimes.

The government's response states that prisoners at all levels of the IEP scheme are eligible for the minimum number of visits under rule 35 of the Prison Rules although the opportunity to earn additional visits above that minimum is part of the current IEP scheme. IEP is being considered as part of the government's wider approach to prison reforms.

Recommendation: Investment for in-cell technology

The Review also recommended investment in new technology, such as in-cell telephony and video call facilities to improve prisoners' contact with their families.

The government's response states that it is reviewing telephony services and considering the future use of such facilities.

Recommendation: Making contact between family and friends and prisons easier

Processes for receiving information direct from families of prisoners were highlighted by the review as requiring improvement. It recommended a dedicated telephone line for this purpose.

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The government's response is that "Prisons have a variety of arrangements in place for families and friends to bring concerns to the attention of staff, and we believe that continuing to improve these, and making information about them more readily available to prisoners and their families and friends, will be the most effective way of ensuring that risk information finds its way to the staff who have the ability to act on it."

Recommendation: Improved treatment of families after a death in custody

The Harris Review also made a number of recommendations in relation to the treatment of families of individuals who die in custody. In particular the review recommended that following any self-inflicted death in custody the Minister for Prisons should personally phone the family of the prisoner who has died to express their condolences on behalf of the State and to promise that a full and thorough investigation will take place, and that any lessons from the death will be studied and acted upon to avoid similar deaths in the future.

The government's response does not set out any change in practice and believes that although personal phone calls from ministers would accurately reflect the importance with which deaths in custody are treated, prison governors will understand the circumstances surrounding deaths in custody better than ministers and are therefore better able to respond.

The Review also drew attention to the fact that families of those who have taken their own lives in custody are not currently entitled to any legal aid or assistance to represent their interests at an inquest. The Review therefore recommended a right to non-means tested public funding for legal representation, the cost of which would be borne by NOMs. The government's response rejected this recommendation, considering it inappropriate to make a decision that would be out of step with wider Legal Help.

Health

The Harris Review made a number of recommendations in relation to health services for those in contact with the Criminal Justice System, including at police stations and courts, in custody and on release. These are issues which Clinks also seeks to address through our membership, along with NACRO and Action for Prisoners' Families, of the criminal justice group in the Strategic Partner Programme: a partnership between the Department of Health, NHS England, Public Health England, and 21 voluntary sector partners⁴.

It is important to note that commissioning of health care services in prisons differs across England and Wales. Since April 2013 health services in English prisons have been commissioned through 10 NHS England Health and Justice regional commissioners whilst healthcare in Welsh prisons is devolved to Welsh government. The response of the government summarised below refers to healthcare arrangements in prisons in England unless otherwise indicated.

Recommendation: Shared responsibility for preventing self-harm

The Harris Review argued for responsibility for prevention of self-harm and suicide to be shared between NOMS and healthcare.

The government's response states that they believe this to already be the case, pointing to the NOMS, Public Health England and NHS England partnership, but accept that there could be greater clarity on how responsibility can be apportioned between devolved and non-devolved areas.

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Recommendation: Improve mental health services

The review recommended that mental health services for those in contact with the Criminal Justice System should be improved including further investment in liaison and diversion services and to Child and Adolescent Mental Health services (CAMHS) and their Welsh equivalents. The government's response outlines that a national specification for the Liaison and Diversion services is currently being tested with a plan to roll out services across England by 2017/18. In addition £1.25bn is being invested over the next five years to support the development of improved, accessible services for children and young people's mental health and wellbeing.

The government refers to "a major transformation programme, backed by investment, to deliver a step change in the way children's mental services are commissioned and delivered, placing the emphasis on prevention and early intervention, building care around the needs of young people and their families, including the most vulnerable". The first step in this "transformation" is for CCGs to submit plans for children and young people's mental health and wellbeing. The focus on prevention is also evident in the new Troubled Families programme also mentioned in the government's response, which will reach up to 400,000 additional families.

In addition, a new Policing and Criminal Justice Bill, announced in the government's manifesto, will include a number of provisions to amend police powers under the Mental Health Act 1983 including removing police cells as possible places of safety for under 18s detained under section 135 or 136 of the 1983 Act, clarifying what is meant by the circumstances under which police cells may be used for such detentions, and reducing the current 72 hour maximum period of detention.

Recommendation: Better access to healthcare

The Harris Review made recommendations about access to healthcare on release from custody and suggested that in England Clinical Commissioning groups should prioritise access to treatment for those referred through Liaison and Diversion.

The government's response was that it is not possible to prioritise treatment on any basis other than clinical need however the government is working to develop a systematic approach to ensure that every person who leaves custody is registered with a GP in order to ensure continuity of care and access to primary and secondary healthcare.

Recommendation: Parity of healthcare provision in prison and the community

The Harris Review argued that there should be parity for those in custody with healthcare provided in the community and the government has indicated their agreement with this principle. As part of this the Harris Review suggested that the Improving Access to Psychological Therapies (IAPT) initiative, which supports the NHS in offering first-line treatment for depression and anxiety-based disorders, should be as readily available to those in prison as in the community.

The government's response points out that this may not be possible as commissioning of services in prisons is based on the needs of the patient population but states that there is significant drive for these developments to be mirrored across the secure estate.

Recommendation: Sharing of medical information

A range of recommendations were made by the review in relation to the need for a consistent approach to sharing medical information and requesting consent to do so. The government rightly acknowledges the difficult balance this involves striking between sharing information essential to protecting a risk to life and respecting the principle of confidentiality

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in order to ensure young people have confidence in accessing health care and support.

The government's response rejects the recommendation for legislation that would create a statutory duty of co-operation for sharing information with the prison service upon organisations such as health, mental health services and the police. They argue that co-operation and aggregate data sharing is well supported in legislation. For example, reciprocal duties to co-operate between the Secretary of State for Justice (on behalf of prisons), probation services and local authorities under the Care Act 2014; and duties to co-operate to reduce re-offending under the Crime and Disorder Act 1988. The government is concerned that in some cases sharing of medical information may be unnecessary, where it does not relate to vulnerability even where consent is given and this may lead to offenders not disclosing problems to healthcare staff. Instead, the government will look at information sharing across the criminal justice and healthcare system and consider the full financial and policy requirements of possible new Information Sharing Protocols.

In addition, the government commits to discuss with the British Medical Association, General Medical Council and other professional organisations the practicalities of healthcare staff employing greater effort to seek consent from young people to share information with non-healthcare staff. They will also consider placing contractual obligations on NHS England commissioned providers to share information with CJS agencies once informed consent is received.

Recommendation: Introducing the concept of 'never events' into prison healthcare

The Harris Review recommended that the concept of 'never events' used within healthcare be introduced in a custodial setting. A 'never event' is a serious incident which is considered unacceptable and which is entirely preventable. The review recommended that a 'never event' be created to ensure that no young person who is identified as requiring detention and treatment/assessment in hospital under the Mental Health Act 1983 should be detained in police or prison custody.

The government's response rejects that a 'never event' is appropriate in a custodial setting and argue that the Mental Health Act 1983 (section 47 in relation to prison) already provides for any adult who requires detention/assessment or treatment in hospital to be provided with it accordingly.

Governance and oversight

The Harris Review made a number of recommendations that relate to the independence, role and sponsorship of bodies that provide independent oversight of the Criminal Justice System.

The government's response states that these recommendations will largely be considered as part of the wider prison reform work. In addition the government considers some of these recommendations to be the remit of those bodies to respond to and as such does not comment on all of those recommendations.



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Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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Conclusion

This briefing has summarised some of the key points from the government response to the Harris Review recommendations and the actions that it plans to take in the future. It also outlines some of the key recommendations which government has rejected.

Clinks welcomes the recognition from the government that self-harm and self-inflicted deaths are unacceptable and should never be viewed merely as a regrettable feature of prison life. The actions the government outlines in its response will go some way towards ensuring this, although other areas may need more attention in the future if the worrying trend of rising self-harm and self-inflicted deaths in prison continues.

We are interested to see more detail on the government's future plans for wider prison reform and look forward to working alongside the Ministry of Justice to inform and shape these based on the knowledge and experience of the voluntary sector.

End notes

1. http://www.clinks.org/sites/default/files/basic/files-downloads/justice_select_committee_inquiry_into_young_adult_offenders_october_2015.pdf
2. Clinks will be providing a submission to the Taylor review informed by a series of consultation events held with our members during February and March 2016.
3. <http://www.clinks.org/criminal-justice/supporting-families-prisoners>
4. <http://www.clinks.org/health>