

December 2018



CLINKS  
RESPONSE

# Clinks' response to the draft Incentives and Earned Privileges (IEP) Policy Framework

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## Section 7 - Guidance

### Introduction

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector and those with whom it works are informed and engaged in order to enable people to transform their lives. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation over with 500 members, including the voluntary sector's largest providers as well as its smallest. Clinks also manages the National Criminal Justice Arts Alliance, a network of over 900 artists and arts organisations who work to ensure arts and cultural opportunities are available to those in criminal justice settings. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 15,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement.

We welcome the opportunity to feedback on the proposed IEP framework. However, we are disappointed that this consultation was not publicised more openly. The voluntary sector working in criminal justice is made up of approximately 1,750 organisations and just over 50% of the organisations that respond to Clinks' State of the sector survey each year tell us that they work within the prison system. These organisations undertake a variety of activities including providing support and rehabilitative services, support for people to maintain contact with their families while in prison, delivering arts based interventions and tailored services to meet the specific needs of people protected under the Equalities Act (2010) or with particular vulnerabilities.

The decision to not consult more widely on this policy framework represents a missed opportunity to draw on the extensive knowledge, expertise and experience of these organisations in motivating and supporting people in prison; encouraging attitudinal and behaviour change; and building positive skills and behaviours that ultimately lead to desistance and fulfilling lives.



To inform our submission we have drawn on the following areas of our work:

- Providing active support to the voluntary sector working in prisons including most recently publication of *The Good Prison: why voluntary sector coordination is essential*<sup>1</sup>
- Co-chairing and providing the secretariat to the Farmer Review
- Co-authoring the Young Review final report and our membership of the Young Review steering group
- Coordination of a network for service user involvement managers which promotes and builds effective good practice in service user involvement.

Our response focuses on the contribution that voluntary sector partners can and should play in supporting people in prison to improve their lives; and the links between this and the IEP framework; the implications of the proposed framework for people protected under the Equalities Act (2010) and in particular black, Asian and minority ethnic prisoners; the implications of the proposed framework for supporting family ties and the importance of service user involvement in the development of an implementation of the framework.

## Response

### Access to voluntary sector interventions

The voluntary sector provides a wide range of services, activities and interventions in prisons that support people to engage in their rehabilitation, change their attitudes and behaviours, and build new skills and identities which provide the foundation for desistance from crime and living a fulfilling life beyond the term of their sentence.

The types of positive behaviours that governors may wish to reward as set out in paragraph 7.2 should be widened to also include the various other non-accredited interventions and activities provided by the voluntary sector that are supportive of desistance.

Rehabilitative and resettlement support should always be prioritised over incentives and earned privileges, ensuring that access to these services, including the breadth of support offered by the voluntary sector, is accessible to all prisoners regardless of which IEP level they are on.

If such services are leveraged as part of the IEP framework, those most in need of rehabilitative interventions or support and information services that are vital for wellbeing and recovery could be excluded from activities that could improve outcomes in prison and on release.

We are concerned that in paragraphs 7.9 and 7.11 increased time out of cell is given as a potential feature of an enhanced regime. The Chief Inspector of Prisons has noted a lack of available purposeful activity and that prisoners are locked in their cells for too long across the prison estate<sup>2</sup>. Clinks members have told us that overcrowding and staff shortages are having a negative impact on prisoners' ability to access the services they need and report being unable to access prisons and prisoners to deliver interventions. For the rehabilitative culture set out as an aspiration in the 2016 *Prison Safety and Reform* White Paper to be achieved, time out of cell needs to be increased overall and

prisoners need access to the interventions that will assist their long term desistance.

Given these concerns time out of cell should not be a feature of the IEP framework.

Similarly, paragraph 7.11 includes access to recreational activities as a potential feature of an enhanced regime. We are concerned about what may be understood as 'recreational'. Paragraph 7.12 goes on to outline that access to exercise and wellbeing facilities above the minimum requirement for physical education set out in the prison rules could also be used as an incentive. The prison rules currently fall well below the NHS guidelines which recommend at least 150 minutes of moderate exercise per week for adults. The recent Sports Review conducted on behalf of the Ministry of Justice (MoJ) by Dr Rosie Meek demonstrated the important role sports can play in improving health and behaviour, aiding rehabilitation and reducing reoffending.

Access to exercise and wellbeing facilities should not be considered as an appropriate incentive.

Similarly, the arts and creative activity has been shown to have a positive impact on people in the CJS. Arts can support improved wellbeing, awaken an interest in learning and help people build new positive identities. Engaging in the arts can also lead to new skills and employment opportunities, as well as equipping participants with a desire to actively engage in their community and culture. The National Criminal Justice Arts Alliance evidence library<sup>3</sup> provides a comprehensive body of research illustrating this. We are concerned, however, that without guidance to state otherwise, governors could perceive this as recreational activity.

Governors should be required to ensure that voluntary sector services, including those utilising the arts or sports to support desistance, are not considered recreational, and that access to them is not viewed as a privilege under the IEP framework.

### Working in partnership with the voluntary sector

Through the provision of essential support and interventions, voluntary sector organisations build trusting relationships with people in prison, and as such have significant knowledge of and understanding of their feelings and motivations and thus behaviour. Paragraph 7.6 suggests that governors should ensure that key workers take a role in coordinating feedback to help determine prisoners' privilege levels and suggests that all staff – including, for example, teachers – should be able to contribute to privilege levels by sharing prisoners' progress and behaviour in education.

Voluntary sector staff should similarly be specified as an example of those who should have an opportunity to contribute to privilege levels.

### Prisoners protected under the equalities act and/ or with specific vulnerabilities

Paragraphs 7.29 - 7.42 address the needs of prisoners protected under the Equalities Act (2010) or with other specific vulnerabilities. As such there are elements in this section which should be requirements and not just guidance. In particular the IEP policy framework should draw attention to the duties of prisons under the Equalities Act (2010).

- » Black, Asian and ethnic minority (BAME) prisoners.

We welcome the proposed process for reviewing levels as set out in 5.10 - 5.13 and 7.24. Evidence shows that the behaviour of BAME people in prison is more heavily scrutinised than non BAME people.<sup>4</sup> As highlighted in the Lammy Review, BAME prisoners perceive worse treatment by the current IEP framework and feedback at Clinks consultations has included that BAME prisoners often see little point in aspiring to the enhanced level as they feel that they will quickly come under scrutiny again and find themselves back on basic. The proposed review process, particularly for a review within seven days for anyone on basic, provides some opportunity to address this.

However, there is a danger that such a process results in the same unequal outcomes as the current IEP system. We therefore welcome the guidance that review panels should be multidisciplinary, but recommend that this should be strengthened to be a requirement and the guidance should give examples of those who might be involved in a review - including education and voluntary sector staff who can bring a perspective from outside of the 'closed' prison culture.

Similarly, the system of commendation and triggers proposed in paragraph 7.23 would prevent prisoners being downgraded immediately upon coming under suspicion and could therefore address some of the issues associated with the increased scrutiny BAME prisoners experience. For this to be realised there would need to be an opportunity for prisoners to appeal any trigger. This would allow for an appeal against triggers for potential future downgrading before it takes place.

We recommend that an appeal system for triggers should be built into the framework.

We make further comment on issues relating to BAME prisoners below in our comments on Annex A.

### **Sufficiently tailoring the framework for other groups protected under the Equalities Act (2010) or with specific needs**

The draft framework makes reference to the fact that foreign national prisoners, women and others may have different needs and may be motivated by different incentives but more guidance is needed on what this should consist of.

Currently the framework makes reference to additional phone calls for foreign national prisoners but does not take into account the extra cost of these nor the challenges prisoners subject to eventual deportation have in illustrating progress towards rehabilitation and resettlement. Similarly there is little detail and consideration of the specific needs of women and girls.

The framework rightly addresses the needs of people with mental health issues and learning disabilities but does not consider people with undiagnosed mental health issues and/or learning disabilities and difficulties. These prisoners may face barriers engaging with the prison regime and as a result struggle to display incentivised behaviours.

The guidance should therefore include that continued breaches of prison rules may indicate an underlying issue of this kind. In addition, given our earlier comments on BAME

disproportionality and the fact that BAME people often access mental health services through a criminal justice gateway, this too should be highlighted in the guidance.

Paragraph 7.32 highlights the barriers older prisoners or those with a disability may have in accessing privilege schemes. The framework should also consider the barriers these groups of prisoners have in accessing opportunities to display behaviours which governors may wish to reward.

For instance, paragraph 7.2 gives personal care, such as taking showers, as an example of positive behaviour governors may wish to reward. However, Clinks member RECOOP has highlighted the barriers older prisoners can face to doing this. RECOOP has developed a model of older prisoners' forums – formal bodies within the prison where prisoners can raise issues and explore solutions. In one prison staff reported that the older prisoners were reluctant to shower and this was becoming a hygiene issue. This was raised at the forum and through discussion it emerged that this was because the time given to get to and from the showers was not sufficient for older prisoners with mobility issues. The prisoners came up with the solution of being provided with dressing gowns, allowing them to move between the cells and the showers with dignity within the allotted time. Once implemented this resulted in all the men showering regularly.

The guidance should highlight the barriers this group may face and also ensure that in general, governors encourage staff to investigate the underlying causes of non-compliant behaviour before resorting to downgrading.

We welcome the inclusion of paragraph 7.35 on maturity that identifies some of the characteristics associated with young adults. This should also highlight the disproportionate number of young adults in custody who are BAME and the importance, in the context of the Lammy Review, of outcomes for this group being scrutinised.

However, we are concerned that paragraph 7.35 contains little guidance on how to take account of these characteristics as part of the IEP framework. The recent HM Inspectorate of Prisons thematic inspection on incentivising and promoting good behaviour with children and young adults identifies a number of concerns about existing IEP schemes as highlighted in the Transitions to Adulthood Alliance response to this consultation.

As members of the Transition to Adulthood Alliance we support their recommendation that this section is revised to provide specific operational guidance to staff on how incentives and sanctions should be adapted to meet the specific needs of young adults. We also support their recommendation that the framework is revised to include specific reference to how to manage young people who display the most difficult behaviour, which the Inspectorate's report drew particular attention to.

### Family contact and visits

The recent Farmer Review highlighted the importance of strengthening prisoners' family ties to prevent reoffending and reduce intergenerational crime. We therefore welcome the requirement on governors in paragraph 6.2 to ensure that access to family days is not part of their local privilege policy. However, paragraph 7.10 outlines that governors may consider incentivising prisoners with additional and/or improved visits which could include longer visits or visits in improved surroundings.



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This is at odds with the evidence that strong family ties support rehabilitation and desistance and may be counter-productive. For instance, unsettled prisoners may be denied additional visits due to behaviour which could be improved through additional family contact.

Using visits as an incentive or privilege for prisoners also fails to take into account that visits are essential to the wellbeing of the families and children of prisoners. If a prisoner is downgraded from an enhanced level where they receive additional or improved visits their families are effectively punished for their behaviour. Of particular concern is the impact on prisoners' children when the frequency of visits changes.

Visit surroundings should always be of the highest standard possible for all prisoners and their visitors in order to facilitate family contact and promote mental and emotional wellbeing. Prisons can be intimidating and oppressive environments for visitors. The environment impacts the quality of visits, how people interact and connect, and the meaningfulness of the visit.

The Farmer Review recommended that:

***Her Majesty's Inspector of Prisons must ensure that the importance of family ties features prominently throughout the new Expectations currently being refined, so empowered governors know this has to be a cross-cutting priority in the running of their prison.***

and

***The Ministry of Justice should ensure that the importance of family ties is a golden thread running through the new policy frameworks based on the revised and pruned body of Prison Service Orders and Prison Service Instructions and also Probation Instructions.***

In the spirit of these recommendations the IEP framework should not allow governors to use the frequency or environment of visits as a way to incentivise prisoners.

## Annex A

We welcome the inclusion of recommendation 24 of the Lammy Review in paragraph 5.16 and the additional guidance provided regarding this in Annex A.

However, this information should be expanded to draw attention to the unequal outcomes experienced by black, Asian and minority ethnic (BAME) prisoners under the current IEP framework and to highlight the Lammy Review's 'explain or reform' principle, which the Ministry of Justice has accepted and all prisons should be subject to.

Given the significant and serious nature of how the current IEP policy is perceived by BAME prisoners and David Lammy's 'explain or reform' principle, the guidance for establishing an IEP forum provided in Annex A is too weak and as it stands represents a missed opportunity to address this issue.

As outlined in paragraph 7.4, 'voice' is one of the key ingredients of



procedural justice. Therefore the forum must provide a meaningful and timely opportunity for prisoners to review IEP decisions.

The IEP forum should be required to meet a minimum of four times a year, as opposed to twice a year as currently proposed.

Similarly paragraph 7.4 highlights the critical importance of neutrality including transparency and unbiased application of decisions. A key part of this must also be consistency of application. This principle will need to be balanced with governor autonomy to design their own IEP frameworks and terms of reference for IEP forums.

Further guidance should be given regarding the minimum requirements for IEP forum terms of reference so that there is some consistency across the estate. This should make reference to service user involvement best practice (see 'other' comments below).

The guidance currently states that each forum must include a prison officer and one representative from the BAME, white and gypsy, traveller and roma (GTR) prison population. This is insufficient and does not recognise the diversity of identities and experiences that exist within the 'BAME' category. Nor is it possible with such a make up to include prisoners subject to the full range of privilege levels or from different parts of a prison.

Forums should be required to include a range of representatives that are reflective of the race, ethnicity and faiths that make up the prison population. They should also be required to include prisoners on different privilege levels and from different wings or sections of the prison.

As outlined by the Lammy Review, the criminal justice system currently experiences a trust deficit amongst BAME communities. There will therefore be a need for concerted effort to encourage meaningful engagement amongst BAME prisoners with the IEP forum.

To assist this prisons should work with BAME led voluntary sector organisations to facilitate and support the forums and this should be highlighted in the guidance.

## Other comments about the draft IEP Policy Framework

### Service user involvement

As already stated we welcome inclusion of recommendation 24 of the Lammy Review, that each prison establish an IEP forum, in the draft framework. As well as having the potential to improve outcomes for BAME prisoners these forums also offer an opportunity to improve trust in the IEP framework amongst all prisoners. For this to be realised the involvement of prisoners in the forum must be done in the most meaningful way possible.



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There is currently little guidance in the framework or Annex A about how to go about this. Clinks has produced a range of guidance on how to meaningfully involve service users in the design and delivery of services, including good practical examples, top tips, checklists, downloadable templates and signposting to further information and support.<sup>5</sup> In addition, many Clinks members have pioneered the involvement of people with lived experience in the criminal justice system in the design and delivery of programmes, and have a wealth of knowledge and expertise to offer in this area. Indeed, there are a number of organisations who already support and facilitate prisoner forums across a number of prisons.

The framework should be revised to suggest that governors should ensure that IEP frameworks are run in line with best practice for service user involvement and make reference to these resources and external organisations that can provide support.

Finally, as outlined in paragraph 7.4, 'voice' is a vital ingredient to positive perceptions of procedural justice. Prisoners are by far the best people to ask about what is likely to incentivise them to change their behaviour, particularly in relation to specific elements such as clothing.

We recommend that prisoners are consulted with both in the development of the national IEP policy framework and local privilege policies.

# CLINKS

**Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.**

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Tavis House  
1-6 Tavistock Square  
London WC1H 9NA  
020 7383 0966  
info@clinks.org  
@Clinks\_Tweets  
[www.clinks.org](http://www.clinks.org)

## End notes

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