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Cabinet Secretary for Justice  
The Scottish Government  
Edinburgh

By email: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

15 January 2021

Dear Cabinet Secretary

## **COVID-19 Response and Data on Conditions in Scotland's Prisons**

We write further to our conversations over the last 10 months on the Scottish Government's response to COVID-19 in prisons.

### **Prison Population**

We are concerned to note that since June 2020 the Scottish prison population has increased again, from 6,869 on 29 May 2020 to 7,465 on 2 January 2021. Of particular concern is the increase in the remand population. The number of people in prison who have not yet been tried has increased from 982 in April 2020 to 1,832 on 8 January 2021 (see [SPS Prison Population](#)).

As set out in our April 2020 [joint briefing](#) with HMIPS and the Independent Prison Monitoring Advisory Group, it is imperative that the Scottish prison population is reduced and does not rise above a level which mitigates the inherent risk of maintaining people in close confinement and spreading the virus in the prison estate and subsequently into the community.

With a new strain of the virus that is reported to be up to 70% more infectious, the increased population within these confined spaces is all the more concerning. From our most recent discussions with HMIPS we know they too are extremely concerned about this issue.

We would welcome assurance that steps will be taken to address the rising prison population, which is fast approaching pre-lockdown levels.

A further concern is that on account of the additional restrictions being placed on those who are symptomatic of COVID-19 infection, and those who have been in close contact with infected persons, people in prison who do have symptoms may not be identifying as such for fear of those further restrictions.

While the reported swab positivity rate for symptomatic persons being tested in the community in Scotland is currently around 10%, information provided to us by the Scottish Prison Service (SPS) indicates that in Scottish prisons on 11 January 2021 that rate was 64% (on that date 16 of the 25 persons who were isolated on account of being symptomatic had tested positive for the virus). These figures suggest that either the incidence of infection is significantly greater in those prisoners displaying symptoms than is the case in the wider community and/or that many prisoners with symptoms are not coming forward to be tested.

We ask that urgent steps are undertaken to better understand the prevalence and increased risks associated with COVID-19 for those who live and work in Scotland's prisons.

## **Prison Data**

In addition to concerns about over-population increasing the likelihood of COVID-19 outbreaks in prisons, we remain concerned that steps taken to prevent transmission do not result in a failure to fulfil prisoners' fundamental rights, including time out of cell, access to outdoor exercise and time spent in purposeful activity.

In [our letter of 17 June](#) we highlighted our concerns in relation to the lack of meaningful, transparent and accessible data to enable adequate monitoring of prison conditions. With prison inspections and in person independent monitoring largely suspended during the COVID-19 emergency situation, access to good quality data is essential.

We have endeavoured to obtain the data necessary to assess the current conditions for people in Scotland's prisons. We [wrote to the SPS](#) on 17 September 2020 requesting data showing:

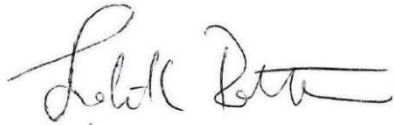
- out of cell time for each prison and a description of the regime therein;
- outdoor exercise - how much time is being afforded to the various prisoner groups across the prisons including those subject to Rule 41 cellular confinement?
- visits - virtual and in person, what is the take up rate and what are (if any) the impediments to these?
- work, prisoner programmes and education- opportunities and challenges with provision of the same;
- in cell telephony and its usage, and the
- number of prisoners accommodated in single and shared cells.

We were advised in [response by the SPS](#) that the data requested could not be provided and were given only very general assurances about the majority of prisoners and averages. The letter also advises that the SPS does not collect centralised data on physical visits, but establishments have reported a reduced demand, while the uptake of virtual visits is only around 25% of available capacity. Given the impact of isolation from friends and family on mental health, these are concerning trends.

Without adequate data and data analysis it is difficult to assert that prisoners' fundamental rights are being adequately fulfilled. It is our view

that urgent steps should be taken to improve the availability of good quality data in the public domain in order that a proper assessment can be carried out. We would welcome your thoughts on this.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Judith Robertson', written in a cursive style.

**Judith Robertson**

Chair of the Scottish Human Rights Commission

cc:

Wendy Sinclair-Gieben HMCIPS

Justice Committee of the Scottish Parliament