

Section 5

Forum

5.1 Something to Say: Too Independent for the Independent Monitoring Board?

Ray Bewry

5.2. For or Against? A Legal Ban on Strike Action by Prison Officers

For: *Phil Hornsby, General Secretary, Prison Service Union*

Against: *Brian Caton, General Secretary, Prison Officers Association*

5.3. Have You Ever Thought About . . . ? Whether It Is Legitimate To Expect Fairness At Governor Adjudications? *Robyn Murdo-Smith*

All correspondence or submissions in relation to this section should be sent to: mark.leech@prisons.org.uk

Have you got something important to say about a serious aspect of our penal system? Can you present your case with clarity, and in a way that advances the penal debate by using arguments that stand up to scrutiny? If so, then the editor would like to hear from you. You choose the topic: the only requirement is that it is relevant to prisons and original. Submissions cannot be returned, so please only send copies.

All submissions must be:

- no more than 3,500 words in length;
- delivered by email to s5.1@prisons.org.uk no later than 31st July 2008.

5.1 SOMETHING TO SAY....

Too Independent for the Independent Monitoring Board?

Ray Bewry

Ray Bewry is the only former prisoner ever to serve on an Independent Monitoring Board, in this article he highlights the many problems that he faced while serving on the IMB at HMP Norwich – starting with how he had to challenge the Secretary of State in the High Court in order to become appointed to the IMB in the first place. He raises issues in this article which are serious and require investigation, how for example he was wrongly prevented from accessing Security Information Reports and having access to information in the prison which the law gave him the right to access; in October 2007 he forced the government to change the law in relation to what information IMB members can have access to. For balance the article is followed by comments from Norman McLean, Head of the IMB Secretariat at the Home Office.

Background Information

I joined the IMB (Independent Monitoring Board) at HMP Norwich in November 2000,

having battled for eleven months against a number of obstacles and rejections, which culminated in a successful High Court challenge against the Home Secretary's initial decision not to appoint me.

A significant obstacle was the statement of the interview panel at HMP Norwich IMB, endorsed by the IMB Secretariat, that I was 'not worthy of trust' because I had not disclosed, at my first interview on 9th December 1999, the fact that I had spent time in prison, having been wrongfully convicted and sentenced for 'Conspiracy to Defraud'. This conviction had been overturned at the Court of Appeal, after I had already served two and a half months of the nine-month sentence.

My desire to join the IMB had been triggered by the effective intervention of an IMB member who had acted on my behalf at HMP Durham, a local Victorian prison where I had been held with an unclassified (U) security rating for the better part of two months. I had expected that following the recommendations of the sentencing judge I should be moved quickly out of this High Security establishment to serve my sentence in an open prison. I repeatedly asked why I was not being categorised as I was clearly a D Category prisoner; it was soon made clear to me that there was no intention that I should be moved to an open prison consistent with D cat status.

I made applications to Governors 5, 4, 3, 2 and 1 without success. I applied to see the IMB but got no response. I then made a Confidential Access application to the Chair of the IMB. Within a couple of days I was approached not by the IMB but by a Senior Officer who told me that he understood I had been complaining to the IMB. I asked how he knew as I had made a Confidential Access application. He gave no answer, and hastily left my cell. This revealed to me that my mail – including my applications to the IMB – had been intercepted. The following day I approached an IMB member who was walking around the prison on a routine visit and asked her why the Board had failed to respond to my applications, and I mentioned the Confidential Access. She replied that they had not received any application from me. She immediately approached the Governor on the wing and displayed great concern at the fact that I had not been categorised after two months, demanding immediate action to arrange for my categorisation and transfer to an open prison. Within days I was given a D Cat and transferred to Hollesley Bay Open Prison.

This experience opened my eyes to the

Section
FiveForum
5.1 Something To Say...

need for an independent body to ensure that prison rules were applied correctly and that prisoners were treated fairly. I considered that my professional qualifications and my background as a local government Health & Safety Officer gave me the tools and the mental framework required to make a useful contribution to the IMB.

I had taken legal advice before the interview and had been told that I should not volunteer this information unless asked specific questions. Nevertheless, I was aware of the fluidity of the prison population and knew that in my IMB activities - if I were accepted - I might encounter people I had met while in Durham prison. Immediately after the interview I telephoned the IMB Secretariat and told them the facts then followed this up with a letter sending them copies of all relevant documentation including the decision of the Court of Appeal. I was interviewed a second time on 15th December 1999 by the Deputy Chair of HMP Norwich IMB and I again volunteered the information relating to my prison experience, which I thought would be valuable to the IMB.

HMP Norwich IMB qualified my failure to disclose the information at my first interview as a 'breach of trust' and did not recommend my appointment in their report to the IMB Secretariat. It appears that the IMB Secretariat failed to notify the Norwich Board that I had voluntarily disclosed the information to them, and inexplicably endorsed the assessment in the interview report. The IMB Secretariat wrote to me stating that I had not been accepted. I wrote back asking for reasons. My request was refused, but I was told that my conviction had been 'one of the factors taken into account when assessing my suitability, even though the conviction had been quashed on appeal'.

I remained dissatisfied with the response, and repeated my request directly to the Prison Minister who was on a visit to Norwich on 21st September 2000, via his Personal Private Secretary. She promised to refer the matter to him for urgent review as I had said that I intended to seek a judicial review if there was no satisfactory explanation forthcoming for my not being appointed. I followed up with a letter dated 24th September 2000, allowing two weeks for the Prison Minister to write to me once he had looked into the matter. Having received no response by 20th October, I filed a Judicial Review claim form challenging the Home Secretary in the High Court.

First Judicial Review Challenge

My challenge was based on the following grounds: a) No reasonable reason for refusing my application for consideration for appointment to the IMB and b) No reason for refusing, even in outline, my request for the

reasons for refusing my application.

In response I received a letter dated 13th November 2000 from the Prison Minister advising that that I had been appointed to the IMB at HMP Norwich. I wrote to the Court on 15th November formally withdrawing my Judicial Review application.

I subsequently discovered that in response to the Prison Minister's decision to appoint me the entire Board at HMP Norwich had threatened to resign.

If I have dwelt at some length on the circumstances of my appointment to the IMB at HMP Norwich it is because I believe that the circumstances of my initial appointment have to a large extent established the opinion, attitude and behaviour of some people towards me in all the time I have served on the IMB. I have never obtained acceptance and respect from the leadership of the IMB and despite my best efforts have never been fully welcomed by them into 'the team'. Instead I have been accused of 'not being a team player', of 'following my own agenda', of acting without consulting or involving others, statements which contradict the fact supported by evidence of my constantly informing and updating my colleagues, the IMB Secretariat and the National Council on important issues.

Not in the team!

There have been many instances where the leadership of the IMB Secretariat / HMP Norwich IMB has referred - sometimes even deferred - to the Prison Governor on matters involving me, which should have been dealt with within the IMB, without my even being told. For example in October 2001 the Chair of Norwich IMB and the Prison Governor after conferring between themselves both applied to the Prison Minister to have me removed. They had been contacted by the Chair of Durham IMB who sent newspaper cuttings reporting the hearings of the Employment Tribunal of which he had been a lay member and which had dismissed my claim for unfair dismissal by Cumbria Council. (*I am not sure that this was not the same person who would have received my Confidential Access Application the year before while I was in Durham prison...*) In any event I had told the interviewing Board of my dismissal by Cumbria County Council and that I was appealing against the decision.

The Prison Governor suggested that the police could provide information that I was consorting with criminals and was therefore not worthy of trust as a member of the IMB. A letter was sent from the IMB Secretariat to the Assistant Chief Constable of the Norfolk Constabulary requesting this information. This 'fishing expedition' was unsuccessful. The ensuing investigation by the IMB Secretariat on behalf of the Prison Minister involved seeking legal advice. The final outcome was a very firm letter