

Review of the Handling of a Special Monitor's Report into Allegations of Organised Fighting within Mt Eden Corrections Facility

UNDERTAKEN BY AUDIT AND RISK COMMITTEE MEMBERS - Section 9(2)(a) (CHAIR) AND Section 9(2)(a) (MEMBER)

Terms of Reference

This review was based on the terms of reference approved by the Chief Executive of the Department of Corrections on 30 July 2015. The Terms of Reference is in two parts and this report deals solely with the Operational Review element of the Terms of Reference, A), not the MECF Governance Processes B).

Objective

The review was to provide an assessment of the adequacy of review processes followed in the Operational Review - '*Special Monitor's Investigation: Allegations of prisoners being forced to take part in organised fighting at Mt Eden Correctional Facility*', and whether issues were communicated and escalated where appropriate.

Specifically, the Review was to verify:

- A. The **timeline** relating to the investigation, issue of the report and escalation of issues within the report
- B. All **parties** who received copies of the Draft Report, and the pathway of consultation, feedback and escalation
- C. The **agreed process** for planning, fieldwork, reporting, feedback, finalising the report, and implementing agreed actions **within the Department**; and whether this process was followed
- D. Any **agreed process** for notifying **Serco** of the investigation, completing the investigation within MECF, communicating the results of the investigation, issuing the report, obtaining feedback and finalising the report; and whether this process was followed.

Approach to the Review

The reviewers, with the support of Section 9(2)(a) and Section 9(2) teams, undertook the following work:

- a desktop review of relevant and related documents, including but not limited to versions of the report prepared by the Special Monitors, the report by the PSU into allegations, minutes and reports of meetings of the Executive Leadership Team, minutes and reports of the MECF Joint Contract Board (JCB)
- a review of the timeline of all key stages of the report process
- a review of a report of all emails that had, as attached, the draft report noting the originator and the recipient of the report
- a review of all Intel reports that emerged from the growing focus on Fight Clubs
- interviews with Department staff associated with the review.

This report is provided for the Chief Executive in the spirit of free and frank advice. It is not designed to be relied upon by third parties. It has been prepared in good faith on the basis of information provided by those people interviewed, and documents supplied. The Reviewers are not able to warrant to the accuracy, reliability or completeness of information reviewed, and have taken the information gathered at interviews at face value.

Meetings were held with:

Neil Beales - Chief Custodial Officer

Section 9(2)(a) - Principal Custodial Officer (Co-author)

Section 9(2)(a) - Principal Custodial Officer (Co-author)

Section 9(2)(a) – Senior Investigator, Integrity Support Team (previously PSU)

Jeremy Lightfoot - National Commissioner

Christine Stevenson - Deputy Chief Executive

Vincent Arbuckle - Deputy Chief Executive - Corporate Services

Ray Smith - Chief Executive

Executive Summary

The review found that the Special Review conducted by members of the Chief Custodial Team largely followed Corrections standard processes to report stage. However the finalisation and follow up of the report did not follow regular process, because the report has never been finalised.

Key stakeholders, in particular the Prison Director of Mt Eden Corrections Facility were not formally advised of issues as they arose, and Section 9(2)(a) was not provided with a copy of the report until May 2015.

We noted however the Prison Director's regular proactive request for information throughout the period of this review.

Normal escalation procedure for high risk issues did not occur, in this case because it was thought there was a lack of evidence. As a result, the ELT (as a group) did not receive the draft report, findings and recommendations.

It became clear during our review that a range of contextual factors contributed to, and surrounded the lack of finalisation of the report. It is useful to reflect on how the matter unfolded, and for the Department to take learnings for the future. Specifically, we provide recommendations later in this report, suggesting that the Department develops a centralised system which will provide a deeper level of monitoring and oversight of all reviews being conducted throughout the organisation, and which includes a mechanism for identifying high risk reviews and escalating these to the attention of the Executive Leadership Team.

Background

Context for the Operational Review

From our interviews, the following context for the review was ascertained:

1. Operational Reviews are a normal and highly regular part of the Department's review processes. At any time a number of reviews will be underway with a wide range of criticality, importance and profile.

2. The review process was impacted by a second review ^{Section 6(c)} which the co-authors ^{Section 9(2)(a)} were required to complete at the same time for the same prison, and by a refocus of effort in addressing matters that emerged at that time as a result of the ^{Section 9(2)(a)} matter.
3. The review was also undertaken in the context that alleged organised fighting in prisons was not a new phenomenon, and that a review had taken place on the subject at MECF as early as 2009.
4. This review was undertaken with respect to a corrections facility that was not managed by the Department. This added complexity as to alignment between the recommendations made by the co-authors and implementation by MECF of recommendations.
5. Accountability for the delivery of prison services at MECF is contracted to an independent body (Serco). Although there are comprehensive governance and monitoring processes, the operating decisions sit with Serco.
6. Minutes of the JCB show that the focus in discussions at those meetings reflected a wider concern about violence at MECF. This had led to discussions about staffing levels and work had been done to gain assurance over this.

These contextual comments are relevant as to the approach taken to dealing with the recommendations of the report, and any escalation processes applied. Below we respond specifically to the matters asked of us in this Review's Terms of Reference.

A. The Report Timeline

Verify the timeline relating to the investigation, issue of the report and escalation of issues within the report

The review panel members were provided with a record of the timeline of events compiled by the Deputy Chief Executive of Corrections from her emails and notes. We asked the National Manager Risk & Assurance to provide us with forensic confirmation that this timeline was accurate by reviewing all emails which attached a copy of the report. The timeline was confirmed as accurate, and augmented with additional email traffic related to the matter by other stakeholders. The following refers:

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|-------------------------|---|
| ❖ 23 May 2014 | Terms of Reference were agreed by the National Commissioner |
| ❖ 26 May 2014 | The investigation commenced with interviews being conducted |
| ❖ 9 July 2014 | A report was finished |
| ❖ 15 July 2014 | Neil Beales emailed a copy of the report to Jo Field, DCE Service Development (his manager) for her information |
| ❖ 17 July 2014 (approx) | The Chief Custodial Officer provided a hard copy of the report to the National Commissioner |
| ❖ 5 September 2014 | The Chief Custodial Officer followed up with the National Commissioner seeking closure |
| ❖ 22 April 2015 | The Chief Custodial Officer emailed a copy of the report to the National Commissioner following up |
| ❖ 20 May 2015 | ^{Section 9(2)(a)} , Deputy Regional Commissioner delivered an edited draft version of the report to ^{Section 9(2)(a)} Prison Director at MECF |
| ❖ 18 July 2015 | Following the release to media, the Chief Executive requested a copy of the report. |

- ❖ It is noted that the version presented to the Prison Director of MECF was in all material respects consistent with the draft report held within the Department as it related to the MECF. As advised to us, the intention of the edits was to provide succinctness, remove repetition, remove references that did not relate to the MECF and to ensure a focus on the primary issue of reducing the prevalence of violence on the site.

B. Recipients of the Report

Verify all parties who received copies of the Draft Report, and the pathway of consultation, feedback and escalation

Parties who received copies

With assistance from the Department we are able to confirm the parties who received versions of the draft report up to the date when it became publicly known that such a report existed. Aside from the co-authors ^{Section 9(2)(a)} [redacted], the following people received various versions of the report:

^{Section 9(2)(a)} [redacted] Policy (for formatting)
^{Section 9(2)(a)} [redacted], Policy (for formatting)
Neil Beales, Chief Custodial Officer
^{Section 9(2)(a)} [redacted] EA at Auckland Prison working with Jeanette Burns
Jeanette Burns, Northern Regional Commissioner (and Acting National Commissioner)
Jo Field, DCE Service Development
Jeremy Lightfoot, National Commissioner
^{Section 9(2)(a)} [redacted] Assistant Regional Commissioner, Northern Region
^{Section 9(2)(a)} [redacted] Prison Director at MECF (edited report on 20 May 2015)

There is no evidence that the existence of the report, or its conclusions were escalated to the Chief Executive in any formal or informal sense before it became publicised in the media on 18 July 2015.

Pathway of consultation and feedback

Records show that the report's initial draft was emailed to two members of the Department's Policy team for formatting on 9 July 2014 – the date on both versions of the report. Neil Beales emailed a copy of the report to his Manager Jo Field on 15 July 2014 for her information. He provided a hard copy of the report to Jeremy Lightfoot as sponsor later that week, and followed up with him for feedback on 5 September 2014 and again on 22 April 2015.

^{Section 9(2)(a)} [redacted] responding to requests from ^{Section 9(2)(a)} [redacted] Prison Director of MECF, edited the report and delivered this edited draft version to him on 20 May 2015.

Escalation

A review of emails, report distribution and minutes of various meetings found no evidence of escalation or reporting to either the Executive Leadership Team as a group, or to a governance committee, or to the Joint Contract Board. As a result of his regular enquiry on the matter, the Prison Director at MECF was informed and aware of the review progress.

C. The Process

Verify the agreed process for planning, fieldwork, reporting, feedback, finalising the report, and implementing agreed actions within the Department; and whether this process was followed

Agreed process

The National Commissioner initiated the Operational Review after some initial investigative work was undertaken by the Professional Standards Unit (PSU) into allegations which were documented by ^{Section 9(2)(a)} and sent to ^{Section 9(2)(a)} National Manager Risk & Assurance on 22 May 2014.

The initiation of the review included engagement by Jeremy Lightfoot with relevant senior executives including Jeanette Burns, and Christine Stevenson. Terms of Reference were agreed.

Planning

The operational review was undertaken in line with agreed terms of reference which were written by staff members trained in completing such reviews, and signed by the sponsor, Jeremy Lightfoot.

The review process was consistent with the framework applied to such reviews by operational reviewers, including interviews, site visits, documentation reviews and attempts to review CCTV footage - limited due to retention policies.

The review team kept Neil Beales, Chief Custodial Officer informed as to progress, who in turn kept the National Commissioner informed of progress - although this was somewhat complicated firstly by executives taking on acting positions over the course of the review, and then other significant reviews commencing including another MECF Incident code named ^{Section 6(c)} and the ^{Section 9(2)(a)} matter. Jeanette Burns as Acting National Commissioner approved an extension of time to complete the review.

Fieldwork

Evidence gathering was conducted via both a site visit by the co-authors, and through separate interviews of prisoners conducted by ^{Section 9(2)(a)} Senior Investigator for the PSU. Obtaining clear and compelling evidence to support the allegations was problematic due in part to a reluctance of current and previous inmates in providing specific testimony.

Reporting and Feedback

After some editing and formatting, the report of the Special Monitors was hand delivered to the National Commissioner's office on approximately 17 July 2014. The report contained conclusions and recommendations. Following usual Department process, the report was considered 'draft' until such time as it is responded to, and then deemed final by the sponsor: in this case, by Jeremy Lightfoot, National Commissioner.

At the point that the report was provided to Jeremy Lightfoot's office on about 17 July 2014, the review team considered that their role in the review was complete.

Our discussions with Vincent Arbuckle, Christine Stevenson and Jeremy Lightfoot during this review highlighted their view that additional work should have been undertaken at this point to provide greater certainty as to conclusions and recommendations, given the lack of accessible evidence.

We identified that Neil Beales followed up with Jeremy Lightfoot on 5 September 2014 in an attempt to get closure on the report. He followed up with Jeremy again on 22 April 2015.

Following media interest on or about 18 July 2015, and its focus on the issue of Fight Clubs in MECF, the existence of the draft report was leaked to the media and others. At that stage, the Department focused on the report's status, its distribution and the processes around operational review.

Implementing agreed actions from the report

The report has never been considered to be finalised, and the actions that would normally follow finalisation of a report were not followed. Those actions would have included a structured approach to addressing the individual recommendations, with monitoring of completion of these actions by an oversight committee of the Department. This has not occurred. The Reviewers would have expected that it would have been discussed with the JCB given it related to MECF.

D. Notifying Serco

Any agreed process for notifying Serco of the investigation, completing the investigation within MECF, communicating the results of the investigation, issuing the report, obtaining feedback and finalising the report; and whether this process was followed.

Through a review of emails it is clear that ^{Section 9(2)(a)} Prison Director for MECF was aware of the report from an early stage and repeatedly requested a copy of the report from various parties within the Department. The results of prisoner interviews conducted by ^{Section 9(2)(a)} from an earlier PSU investigation had been provided to the Prison Director by ^{Section 9(2)(a)}

^{Section 9(2)(a)} obtained agreement from Jeremy Lightfoot to provide a hard copy of an edited version of the report to ^{Section 9(2)(a)} on 20 May 2015.

The Department has a clear process for escalating matters of concern to Serco. This process is supported contractually, and the Department has a history of holding Serco to account for under performances as per the contract. In this case we understand that the lack of hard evidence to support the existence of a 'fight club' resulted in the National Commissioner not escalating the matter. The National Commissioner was focused on the broader issue of reducing violence and ensuring there were adequate staffing levels at MECF.

Adequacy of Review Processes and Other Observations

1. Could more have been done in the Operational Review Process?

Discussions with the reviewers highlighted the key challenges of relying on the evidence of, or interviewing a reluctant inmate or ex-prisoner group. Those prisoners considered themselves at risk by providing details around prisoners or staff involved in organised fights. CCTV footage was not retained sufficiently long enough to provide evidence.

In any event, the reviewers' conclusions were that a fight club existed within the MECF, and they raised concerns including staffing levels at MECF. Clear recommendations were provided in the draft report.

Neil Beales acknowledged that a more formal and timely follow up process on the status of each report would have been beneficial and confirmed to us that such a process is now in place for Reviews.

Comments received from Christine Stevenson, Vincent Arbuckle and Jeremy Lightfoot during our interviews indicate that aspects of the methodology could have been improved, including increasing the sample sizes and better aligning the findings and recommendations.

The long term recurring nature of these allegations, plus the relative consistency of complaints strongly supported the existence of a fight club at MECF. More work should have been requested into the allegations during the review, and the recommendations could have been further refined in order to finalise the report.

2. Why was the Report never finalised, and what was the impact?

The answer to the first part of this question was answered through an interview with Jeremy Lightfoot, National Commissioner. The response received from him was:

- The evidence gathered was not sufficiently conclusive and added little to existing knowledge - organised fighting in certain prison facilities was thought to exist for some time.
- The recommendations in the Report were related to MECF and therefore any related recommendations were not able to be implemented by Corrections. There was some question as to the mechanism for requiring Serco to implement actions from a review which has been conducted by Corrections - refer also to the comments under the heading of Context of the Operational Review.
- The key allegations that prompted the Operational Review had been communicated to the Director of the MECF. Therefore there is a question as to whether the concerns could have been acted on by him either during the review, or at any time, in the absence of a finalised report.
- Another incident Section 6(c) and the Section 9(2)(a) matter emerged while the report was in draft and these took precedence, and all resources. The Operational Review on organised fighting did not become a priority.
- The National Commissioner was focused on the bigger issues such as strategies for controlling violence at MECF of which fight clubs were a subset, and the staffing levels at MECF.

On the second part of the question - the Impact of Delay

- Jeremy Lightfoot advised that the outcomes of the Review were discussed with his direct reports in the Corrections Services Leadership Team (CSLT) meetings and actions to address some, if not all, recommendations that would apply to Corrections-run facilities would have been discussed and disseminated. The lack of a structured approach to dealing with the recommendations from the report meant that there is no assurance that any recommendations were implemented at MECF.
- The Prison Director of MECF had been interested in the review process and was aware of the allegations, and the PSU interview outcomes, although he did not receive a copy of the Special Monitors' Report until 20 May 2015. We did not ask the Prison Director of MECF as to whether any additional actions have taken place within the facility as a consequence of the receipt of the edited Report. It is conceivable that changes were made without the Prison Director having a copy of the draft report.

We noted from minutes of the Joint Contracts Board that the matters of staffing levels and violence within MECF (two related recommendations) were on the agenda in meetings between Serco and Corrections but discussion related to MECF fight clubs were not evidenced in the minutes.

- If the report had been finalised, and recommendations communicated to the Prison Director of MECF in a timely manner, it is expected that discussions about the findings and recommendations would have taken place. The decision to accept or act on any recommendations would have rested with the Prison Director. Accepted recommendations could then have been monitored by Corrections. The Reviewers consider that a matter of such seriousness would then have been brought to the attention of the JCB, however it should be noted that the JCB was fully engaged in addressing the wider issues of violence in the prison and overall staffing levels that created a higher risk of violence.
- There is no evidence to suggest that there was any deliberate strategy to delay the finalisation of the report.

3. Should the Issue have been escalated to the CE and/or Others?

Based on where the Special Review sat in the hierarchy of reviews within Corrections, it would not have been expected for the initiation of this Review or report in draft form to have been communicated to, or discussed with the CE. Indeed there is no evidence that such an escalation occurred.

There is no evidence that the draft outcomes of the review were reported to the JCB of which the CE of the Department is a member.

The Department deals with a wide range of issues and incidents in the course of its work. Escalation to the Chief Executive is a judgement call. Given the seriousness of the report and its potential impact on the Serco contract, the reviewers believe that escalation would have been appropriate to the Chief Executive and, likely, the JCB.

This would have afforded the Chief Executive the opportunity to discuss the matter with the Minister if he so chose.

Overall Conclusions

The process of finalising the report would have achieved the following:

1. Addressed any concerns around the depth of the review;
2. Addressed any concerns around the link between findings and recommendations;
3. Allowed for formal communication around the findings with Serco and the Joint Contract Board;
4. Provided a basis for a structured approach to address agreed recommendations in conjunction with Serco.

Whilst appreciating the context of the operational review and subsequent presentation of the draft report, the conclusions of the review were such that the report should have been finalised and a structured follow up process instigated. An agreed process should be implemented within the Department to manage operational reviews, and to provide visibility of these to the Executive Leadership Team, from initiation to completion (recommendation / action implementation).

Consideration should be given to the development of a register which captures critical matters such as the issue being reviewed and why, the names of the reviewers, the risks the matter deals with, the expected scope, timing, and any cost involved, and the sponsor and key stakeholders.

Highlighting the risk profile of the matter being reviewed would distinguish between matters that are likely to be more serious and therefore required to be escalated and kept under watch, and those that are more routine. The register could record progress of the review and the findings and progress of implementation of the subsequent agreed actions should be monitored by the appropriate governance committee within the Department.

Section 9(2)(a)
[Redacted]

Section 9(2)(a)
[Redacted]

Chair of Department of Corrections Audit & Risk Committee

Section 9(2)(a)
[Redacted]

Section 9(2)(a)
[Redacted]

Member of Department of Corrections Audit & Risk Committee