



House of Commons
Justice Committee

Criminal justice inspectores

Fourth Report of Session 2015–16



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*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons to be printed
23 February 2016*

Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

Current membership

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The following Members were also members of the Committee during the Parliament:

Richard Burgon MP (Labour, Leeds East), Sue Hayman MP (Labour, Workington), Christina Rees MP (Labour, Neath), and Nick Thomas-Symonds MP (Labour, Torfaen).

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publications

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and by The Stationery Office by Order of the House.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Jonathan Whiffing (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Christine Randall (Senior Committee Assistant), Anna Browning (Committee Assistant), Yohanna Sallberg (Sandwich Student), and Liz Parratt (Committee Media Officer).

Contacts

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1. Introduction

Correspondence between HM Chief Inspector of Prisons and the Ministry

1. On 1 December 2015 Mr Nick Hardwick, then coming towards the end of his extended tenure as HM Chief Inspector of Prisons, wrote to the Permanent Secretary at the Ministry of Justice, Mr Richard Heaton, raising concerns about the practical impact of spending controls which had been imposed by the Ministry on his Inspectorate, along with the Ministry's other Arm's Length Bodies (ALBs). In particular Mr Hardwick objected to the requirement on him to submit weekly spending requests to the Ministry's Director General for Criminal Justice, Indra Morris, in relation to areas of discretionary spend. The implications of this requirement for HM Inspectorate of Prisons' (HMIP's) use of fee-paid associate staff to carry out a proportion of inspection work were, in Mr Hardwick's view, that he would have to suspend his inspection programme.¹ Mr Hardwick copied his letter to us.² We interpreted Mr Hardwick's decision to do so as an attempt to enlist our interest in the immediate problem which he faced but also in the general relationship between HMIP and the Ministry.

2. In his 1 December letter Mr Hardwick raised a number of wider concerns about the Inspectorate's independence from the Ministry, and what he considered to be the lack of understanding of it within the Ministry. He said:

I am a Crown appointee, not a civil servant. My staff are hosted by the Ministry of Justice; we are not an MOJ team. I am accountable to Ministers and Parliament — not officials. Our position differs from most ALBs in that we are not making independent judgements on behalf of Ministers but inspecting and commenting on services for which Ministers and senior officials in our sponsor department are directly responsible. I have raised concerns about independence many times in the past when officials have appeared not to understand the position.³

In addition Mr Hardwick highlighted the requirement under the Optional Protocol to the UN Convention Against Torture (OPCAT) for States Parties to guarantee the functional independence and the independence of personnel of their National Preventive Mechanism (NPM). NPMs are responsible for making visits to places of detention, monitoring the conditions under which detainees are held and making recommendations to prevent their ill-treatment. HMIP is the co-ordinator of the UK's NPM.

3. Mr Heaton replied to Mr Hardwick's letter on 8 December.⁴ In his reply he stated that Mr Hardwick did not need to submit a weekly application to retain associate staff, and that expenditure for the roles had been approved to the end of the financial year. Mr

1 In a subsequent [letter dated 1 February 2016](#) Mr Hardwick clarified that HMIP's expenditure on associates was expected to amount to about 12% of the Inspectorate's budget in 2015/16.

2 [Letter from Nick Hardwick, HM Chief Inspector of Prisons, to Richard Heaton, Permanent Secretary, Ministry of Justice, dated 1 December 2015](#)

3 [ibid](#)

4 [Letter from Richard Heaton, Permanent Secretary, Ministry of Justice, to Nick Hardwick, HM Chief Inspector of Prisons, dated 8 December 2015](#)

Heaton's response did not address the wider points in Mr Hardwick's letter concerning the Inspectorate's status.

4. We decided that this episode, and the implications which it had for HMIP and the other criminal justice inspectorates sponsored by the MoJ, were of sufficient importance for us to publish the correspondence into which we had been copied, and to hold an evidence session to explore the issues with Mr Hardwick, Mr Peter Clarke, the incoming Chief Inspector of Prisons, Mr Heaton, and Indra Morris, Director General, Criminal Justice, at the MoJ. We held this evidence session on 20 January. We are grateful to our witnesses for attending at short notice to answer our questions on the matter.

The purpose of this Report

5. Our purpose in producing this short Report is not to formulate precise recommendations for the future framework of the relationship between the Ministry and its criminal justice inspectorates. That is a matter which requires careful consideration and discussion involving all interested parties, including the new Chief Inspectors of Prisons and Probation. Our purpose is instead to express our opinion on the overall contours and timetable of that process of consideration and discussion, and the principles which we think should underpin it, to ensure that the relationship between the Ministry and its inspectorates commands public confidence.

2. Criminal justice inspectorates

HM Inspectorate of Prisons

6. HM Inspectorate of Prisons is probably the best-known of the various criminal justice inspectorates.⁵ The current office of HM Chief Inspector of Prisons was created under the Criminal Justice Act 1982, although prison inspection dates back to the nineteenth century. The Inspectorate's main statutory remit is to inspect prisons in England and Wales and immigration detention facilities across the UK, and to report to relevant Ministers its findings on the treatment and conditions of detainees. The Inspectorate also conducts studies into thematic custodial issues, often in conjunction with other inspectorates.

7. Our predecessor Justice Committee, when reporting on its pre-appointment scrutiny of Mr Hardwick in 2010, expressed clear support for his assertion of the importance of the Inspectorate being a fully independent operation. The Committee said

The independence of the inspection function, and its unequivocal perception as such, is crucial for the conduct of objective scrutiny and for public confidence in the service.⁶

It also expressed concern about annual appraisal of the Chief Inspector's performance being one of the terms and conditions of the appointment, arguing that performance would be better assessed by feedback from stakeholders and by peer review.⁷

8. The most crucial manifestation of the independence of the Chief Inspector is that the content of the Inspectorate's reports should be the product of the Chief Inspector's own judgment. We have not seen any evidence that there has been any serious threat to the ability of the Inspectorate to arrive at informed and evidence-based judgments as a result of its inspection activities during Mr Hardwick's term in office. That is not to say that relations between Mr Hardwick and Ministers were always harmonious. As Mr Hardwick explained to us, when Mr Grayling was Secretary of State for Justice the two men had some "pretty robust"⁸ discussions about the content of the Inspectorate's reports. In particular, Mr Grayling spoke to Mr Hardwick about the Inspectorate's Annual Report for 2014-15 before its publication.⁹ But Mr Hardwick also made clear that "I have generally been able to publish my reports and say what I want to say without let or hindrance".¹⁰ It would be an indicator that something was seriously amiss if the Chief Inspector's reports did not unsettle Ministers. We note too that Mr Hardwick accepts the right of Ministers to discuss with him the findings of his reports, and that he was willing to consider their views.¹¹

5 The others are: HM Inspectorate of Probation, also sponsored by the Ministry of Justice; HM Inspectorate of Constabulary and HM Inspectorate of Borders and Immigration, both sponsored by the Home Office, and HM Crown Prosecution Service Inspectorate, sponsored by the Attorney General's Office. Related bodies include the Prisons and Probation Ombudsman (PPO) and the Independent Monitoring Boards (IMBs) at each prison establishment.

6 [Fourth Report of the Justice Committee](#), Session 2009-10, Appointment of HM Chief Inspector of Prisons, HC 354, paragraph 27

7 [ibid](#)

8 [Oral evidence 20 January 2016, Q40](#)

9 [Qq53-4](#)

10 [Q41](#)

11 [Qq44-46](#)

9. If the Chief Inspector of Prisons has resisted any political pressure which may have been applied to attempt to influence his assessments of standards in prisons, that is not to say that his relationship with the Ministry has been free of friction in other respects, as Mr Hardwick makes clear in his letter of 1 December. A long-running disagreement took place over the Ministry's wish to undertake an annual appraisal of Mr Hardwick's performance as Chief Inspector. Mr Hardwick explained the stand-off which had arisen when he gave evidence to the previous Justice Committee in March 2015

They kept trying to appraise me and I kept saying no. At one point there was a threat. They said to me, "If you want to be reappointed, you have to agree to be reappraised by us." I said I was not going to do it. I said, "You can talk to me about my business plan, if you like, and what I am doing about it." I arranged a 360-degree appraisal process which I discuss with people doing a job similar to mine. It has worked reasonably well. I think appraisal is a good thing, and there could be an argument for a better system. I just do not think I should be appraised by people about whom it is part of my job to say things that sometimes they will not like.¹²

10. We asked Mr Heaton and Ms Morris for the Ministry's side of the story. They sought to distinguish between appraisal of the performance of the Chief Inspector as an individual and appraisal of the performance of the Inspectorate as whole against its objectives and its budget. Indra Morris told us

The proposal for all ALBs, whether it is for the chairs or for the postholders, is that the discussion should be about the delivery of the business plan, not the individual's performance, the content of what they say or the content of their inspections. It is incumbent on us, as a sponsoring Department, to have a good, structured annual discussion about how things are.¹³

We note that by his own account Mr Hardwick had declared his willingness to discuss the Inspectorate's business plan, just as he has recognized the legitimate role of external control over his budget as a whole.¹⁴ To some extent it may be possible that the impasse between the Ministry and Mr Hardwick over annual appraisal has been a matter of semantic misunderstanding. Mr Heaton and Ms Morris confirmed that no discussions had yet taken place with Mr Clarke on the subject of appraisal.¹⁵

11. In his 1 December letter Mr Hardwick lamented

I have sought unsuccessfully to establish protocols or a framework document that set out how the relationship between the Department and Inspectorate should operate. I have formally raised my concerns in evidence to the Public Administration Select Committee, the Justice Committee, the National Audit Office and the Public Accounts Committee. All these bodies have agreed the relationship between inspectorates such as this and sponsor departments need to be reviewed. I note that in its recent report the Justice Committee has again repeated its recommendation that the Chief Inspector should report directly to Parliament.

¹² [Oral evidence from Nick Hardwick on the work of HM Chief Inspector of Prisons, 4 March 2015, Q 14](#)

¹³ [Q108](#)

¹⁴ [Letter dated 1 December 2015](#)

¹⁵ [Qq 100-104](#)

12. Whatever may have been the obstacles in the past to preparation and agreement of a protocol setting out the relationship between HMIP and the MoJ, Indra Morris made it clear that there was now full agreement within the Ministry, among officials and Ministers, that such a protocol was needed. Indeed, a draft protocol had been prepared, but she had not been satisfied with it and wanted to hold discussions with the outgoing and incoming Chief Inspectors with a view to drafting a new version, which she would be willing to provide to us for comment before finalisation. She also agreed that it would make sense to establish protocols defining the Ministry's relationship with HM Inspectorate of Probation and the Prisons and Probation Ombudsman. In a subsequent letter Mr Heaton has confirmed that discussions are under way on the HMIP protocol.¹⁶

Criminal justice inspectorates

13. We note that in 2014 the National Audit Office conducted a comparative review of criminal justice inspectorates which referred to the risk that the independence of inspectorates could be compromised by Ministers' role in appointments, including deciding on the length of tenure of Chief Inspectors and on inspectorates' budgets. However, the NAO also found that in practice judgments made by Chief Inspectors were arrived at independently:

Once appointed Chief Inspectors act independently in carrying out inspections. The historical context, personal style and authority of the Chief Inspector can be crucial in setting the tone for the inspectorate. In doing so, Chief Inspectors may tread a delicate line in demonstrating independence and shining a light on the impact of reforms. For example, HM Chief Inspector of Prisons has publicly used inspection findings to make observations and recommendations about proposed legislative and policy changes.¹⁷

14. The NAO also recommended that there should be clarification of the relationship between Inspectorates and their sponsoring departments, along with separation of the sponsor roles within departments from areas of policy or operational responsibility for the inspected areas, to avoid perceived or actual conflicts of interest.¹⁸ The Public Accounts Committee, in its follow-up report on the subject, concluded that current arrangements potentially posed a serious threat to inspectorate independence, and recommended that:

The Cabinet Office should conduct a full review of the appointment, budget allocation and reporting arrangements for Chief Inspectors. It should address specifically whether inspectorates' independence would be best served by independent appointment and sponsorship arrangements, and a measure of direct reporting to Parliament such as annual reports taken by the appropriate select committees.¹⁹

15. The Government rejected this recommendation in July 2015, and subsequently John Manzoni, Chief Executive of the Civil Service and Cabinet Office Permanent Secretary, said in a letter to the Chair of that Committee, Meg Hillier MP that criminal justice

¹⁶ [Letter from Richard Heaton to the Chair dated 8 February 2016](#)

¹⁷ [Inspection: a comparative study, National Audit Office, HC 1030 Session 2014-15, February 2015, p. 9](#)

¹⁸ [Ibid p.12](#)

¹⁹ [Fifty-third Report from the Committee of Public Accounts, Session 2014-15, Inspection in home affairs and justice, HC 975, Recommendation 1, p.5](#)

inspectorates would be included in a review of arm's length bodies with regulatory functions. He said

The review will take a transformative approach to overhaul governance, accountability and leadership, deliver significant efficiencies and reduce the burden on the organisations being regulated. Including the Chief Inspectors within this wider regulatory review will allow us to identify greater efficiencies than would have been the case by reviewing them in isolation.²⁰

The terms of reference of this review suggest that it will focus on governance and accountability in terms of efficiency and deregulation, which may not be as appropriate for inspectorates as for regulatory arm's length bodies. In oral evidence to us both Mr Hardwick and Mr Clarke highlighted the importance of the Cabinet Office review understanding the difference between inspectorates and regulatory arm's length bodies.²¹ Mr Heaton informed us in early February 2016 that the remit of the review had not yet been finalised.²²

Independent Monitoring Boards

16. In its Report of Session 2014-15 on prisons: planning and policies, the previous Justice Committee raised issues concerning the functions and governance of the Independent Monitoring Boards (IMBs) which operate in each prison establishment. Under the Prison Act 1952 an IMB is required to be appointed by the Secretary of State for every prison: members of the Board have access to the prison and prisoners and they report annually and additionally as required to the Secretary of State on treatment of those in detention. Several Chairs of IMBs reported to the previous Justice Committee a sense of disillusionment with the extent to which their observations and recommendations were heeded by the Ministry. With each Board appointed directly by the Secretary of State, there is potentially a danger of lack of consistency of practice, and we note that in January 2016 a new National Monitoring Framework was launched to encourage higher standards. The current Government in its response to the previous Committee's report indicated its willingness to accept that Committee's suggestion that the role of IMBs should be subject to further discussion. We understand that some work may already be in train within the Ministry to examine the governance of IMBs.

Conclusions

17. In this final section of our Report we set out our conclusions and recommendations for the immediate future of the relationship between the criminal justice inspectorates and the Ministry of Justice, and for our intentions to act as a bulwark for the Chief Inspectors, if needed, against any real or perceived threat to their independence of judgment.

20 [Letter from John Manzoni, Chief Executive of the Civil Service and Cabinet Office Permanent Secretary to Meg Hillier, Chair of the Public Accounts Committee, dated 19 November 2015](#). Another recent development is that the Government has consulted on the creation of a single Public Service Ombudsman, bringing together the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman

21 [Qq 56-60](#)

22 [Letter from Richard Heaton to the Chair, dated 8 February 2016](#)

18. Good governance arrangements for criminal justice inspectorates are not an end in themselves: they are a means to help ensure the criminal justice system is effective and civilised, including in the important area of prison safety. For several years prison safety statistics have been showing deterioration across a range of indicators: including self-inflicted deaths and other harm, and violence against other prisoners and prison staff. This is a trend that must be arrested and reversed, and there must be full public confidence in the effectiveness and independence of all those voices which are holding the Ministry and NOMS to account for their running of the custodial system. We have taken some important oral and written evidence on prison safety²³ and we are separately considering further steps we might take on the subject, recognizing the central role of HMIP in upholding prison safety.

Protocols

19. We warmly welcome the Ministry's acceptance of the desirability of protocols setting out the terms of engagement between the Ministry and its Inspectorates and the Prisons and Probation Ombudsman. We also welcome the fact that the Ministry plans to discuss the protocol concerning HM Inspectorate of Prisons with the previous Chief Inspector of Prisons and the incumbent Chief Inspector, as well as the Ministry's undertaking that we will be consulted on the draft before it is finalised. *We recommend that the Ministry undertake wider consultation of stakeholders on a draft protocol.*

20. We note the Ministry's reluctance to set a firm deadline for having a protocol in place. This caution may be understandable at an early stage in discussions. *However we emphasise the need for a protocol to be in place well before the end of the first year of Mr Clarke's term of office. In that context we see no strong case for the development of a protocol to be delayed to await the outcome of the Cabinet Office review of arm's length bodies. We recommend that the protocol eventually put in place for HM Inspectorate of Prisons should be used as the blueprint for equivalent protocols for HM Inspectorate of Probation and the Prisons and Probation Ombudsman, which should be developed in parallel. We also recommend that the Attorney General consider the introduction of a similar protocol for HM Crown Prosecution Service Inspectorate.*

21. Given the problems of accountability and governance which have arisen with HM Inspectorate of Prisons, an alternative to the establishment of generally agreed protocols for each of the Inspectorates would be to revisit the statutory framework governing each of them with a view to redesigning and aligning the relevant legislative provisions. This could still be a necessary recourse if the introduction of protocols does not prove itself effective in the next few years.

Our relationship with the Inspectorates and IMBs

22. It was clear throughout Mr Hardwick's term in office that he was enthusiastic for a deeper relationship with the Justice Committee; and Mr Clarke expressed the same sentiment at his pre-appointment scrutiny hearing.²⁴ We have given some thought to the means by which, within the existing statutory and political environment, we could

23 [Oral evidence on prison safety taken on 1 December 2015](#) from Andrew Selous MP, Minister for Prisons and Probation, and Michael Spurr, Chief Executive, National Offender Management Service, and [associated written evidence](#)

24 [Oral evidence on 24 November 2015, Q61](#)

strengthen our relationship over the course of this Parliament with the three relevant Chief Inspectors and the Prisons and Probation Ombudsman.

23. In our report on the pre-appointment scrutiny of Mr Clarke and Dame Glenys Stacey as Chief Inspectors of Prisons and Probation respectively, we recommended that each of them draw up a strategy for their respective Inspectorate within three months of taking up office, and indicated that we would wish to hold an evidence session with them both to discuss those strategies.²⁵ **Given the developments which have taken place since then, including in relation to protocols, we consider it may make sense, subject to discussion with those concerned, to hold an annual evidence session covering all these governance topics with the Chief Inspectors of Prisons, Probation and the Crown Prosecution Service, and the Prisons and Probation Ombudsman. Such an annual event would not of course prejudice the ability of any of the inspectors to submit views to us at any time, whether pertaining to relevant inquiries we are conducting, to their day to day inspection work, or to specific or general governance and independence concerns. We have no formal constitutional role as a guarantor of the independence of criminal justice inspectorates, but we consider ourselves well placed to play such a role informally, and it is a role which we intend to play over the course of the Parliament with due seriousness and responsibility.**

24. Independent Monitoring Boards are an important component of the system of oversight of the prison system. They report in the first instance to the Secretary of State, but they should equally consider that we are a defender of their voice and an outlet for them to make representations to if they wish to do so. As the Ministry has undertaken to discuss the role of IMBs with us, we wish to make clear that we would expect to be consulted by the Ministry if it brings forward any proposals to make significant changes to the remit or governance of IMBs.

²⁵ [Third Report from the Justice Committee of Session 2015-16](#), Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation, HC 624, paras 22 and 32

Formal Minutes

Tuesday 23 February 2016

Members present:

Robert Neill, in the Chair

Philip Davies

Victoria Prentis

Mr David Hanson

Marie Rimmer

Draft Report (*Criminal justice inspectorates*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 24 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 1 March at 9.15am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry page](#) of the Committee's website.

Wednesday 20 January 2016

Question number

Nick Hardwick, outgoing HM Chief Inspector of Prisons, and **Peter Clarke**, incoming HM Chief Inspector of Prisons.

[Q1-70](#)

Richard Heaton CB, Permanent Secretary, and **Indra Morris**, Director General, Criminal Justice, Ministry of Justice.

[Q71-134](#)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–2016

First Report	Draft Allocation Guideline	HC 404
Second Report	Criminal courts charge	HC 586
Third Report	Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation	HC 624
First Special Report	Women offenders: follow-up: Government response to the Committee's Thirteenth Report of Session 2014-15	HC 374
Second Special Report	Criminal courts charge: Government response to the Committee's Second Report of Session 2015-16	HC 667