



HM INSPECTORATE OF PRISONS

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HM Chief Inspector of Prisons
NICK HARDWICK CBE

Date : 1 December, 2015

Richard Heaton
Permanent Secretary
Ministry of Justice
102 Petty France
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A handwritten signature in blue ink that reads 'Dear Richard'.

HMI Prisons : Independence and sponsorship arrangements

I am writing to you concerning the process by which spending controls and other measures are being applied to the work of the Inspectorate and the unacceptable consequence this has for the independent delivery of my statutory functions. In particular, I am concerned about the requirement to obtain the Department's approval each week for the individual expert associates and temporary administrative staff I deploy to carry out and organise my inspection programme.

I had a helpful telephone conversation about this with Indra Morris, the relevant Director General, last Friday, 27 November 2015, which resolved the immediate critical practical issues for this week and we agreed a permanent acceptable resolution required broader clarification of the Inspectorate's relationship with the Department. I am mindful of the Justice Committee's comments about the importance of the Chief Inspector's independence in their report of 27 November on the appointment of my successor, Peter Clarke. Of course, it will be for Peter to decide how he wants to take these issues forward in the medium and longer term and I have not yet had an opportunity to discuss this with him. For now, however, the problem is mine and there are some practical matters and matters of principle that require immediate resolution. In view of the Justice Committee's desire to have a deeper relationship with the Chief Inspector, I have copied this letter to the Chairman of the Committee.

For the avoidance of doubt, I fully accept that while the Inspectorate continues to be sponsored by the Ministry of Justice I must deliver my responsibilities within the budget you set. I fully accept that my budget delegation will include department or government

wide controls on certain types of expenditure – standards of travel or accommodation for instance – that should apply to the Inspectorate. I fully accept that I must properly account for the public funds I use. I understand the financial pressure the Department is under both this year and next and set out below my intention to make a further contribution in 2015/16 to meet those pressures. However, I do not accept that officials responsible for the services we inspect should exercise day to day control over how I inspect those services. In particular, I do not accept that it is for you to decide what experts I need for a particular inspection, how I should control the quality of my reports or organise the logistics of the inspection programme.

Business case

First, I do not believe it is practical for you to assume day to day control over the Inspectorate's work in this way. The Inspectorate is not a traditional office based organisation. Inspectors work from home when they are not out in the field during an inspection. The inspection process itself is a pipeline with an uneven flow of work. I therefore took the decision two years ago to gradually replace some of our permanent salaried inspectors with fee paid associates with particular expertise that I could deploy as and when I required them. This measure was a key part of delivering the savings I achieved. The associates include former prison governors with security expertise, clinically qualified health specialists and substance misuse experts. I use fee paid editors to finalise and quality control reports; they provide better quality for less cost than using inspectors with operational backgrounds for this task. I currently have 23 reports at various stages of production. We have a small office based inspection support team who organise the complex logistics of the inspection and report production process. Associates and editors have to be trained for their role with us and booked some months in advance of when they will be required. I am now seeking advice about whether these bookings create any contractual obligations for us. A substantial part of our budget comes from non-MOJ sources for specific pieces of work. These include an announced sensitive inspection of HMP Maghaberry in Northern Ireland in early January 2016.

No concerns have been raised with me about the performance of the Inspectorate that might justify interference in our independence now. I have reduced my unit costs – inspection hours – by 16% on my 2010 baseline. The National Audit Office's review of our work (*Inspection: A comparative study*) generally commented favourably on our performance. For the second year running our staff engagement scores have been the best in the Civil Service. Our stakeholder feedback is consistently positive.

My current concerns arise from the requirement to submit weekly spending requests to the Director General about areas of discretionary spend. Most of these relate to training and administrative matters and while I think these should be for me to decide, they can be resolved relatively easily. I am prepared not to pursue or to delay some of them. However, I was advised on 24 November that the Director General was 'minded not to approve' my use of any expert associate inspectors and associate editors or the use of some temporary publications and inspection support staff. These individuals do not do avoidable work. I responded that day that the immediate consequence of a decision not to approve the use of these personnel was that I would have to suspend the inspection programme while I focused on completing the production of reports already in the

pipeline and organising the redeployment of permanent staff to cover the roles previously undertaken by associates where this was possible. In many cases I do not have permanent staff with the expertise required to do so. I or my successor would then have to restart a reduced programme once new arrangements had been made. I pointed out that I am statutorily required to consult on my inspection programme and inspection framework and I would not be able to do that in these circumstances. I explained I am also required to co-operate with other criminal justice inspectorates and without associates I would not be able to honour my existing commitments in this regard. I provided further detailed explanations about the associate inspectors and editors I would require for each of the inspections I have planned before my term of office expires on 15 January 2016.

On Wednesday 25 November I had a long standing regular bi-monthly meeting with the entire Inspectorate's staff including associates. I was concerned that associates should not turn down work with other organisations in the expectation we would require them and so I briefed staff about the uncertainty surrounding associates' continued use and whether the inspection programme would have to be suspended. On Thursday, 26 November I was told that the Director General had approved the deployment of associate staff 'for next week but only for next week.' On Friday 27 November I was told the spending request had been approved. I understood from my telephone conversation with the Director General later that day that her decision would have to be approved by you and would have to be reviewed each week. My understanding therefore is that I do not have approval to employ the staff I need to run the programme I have scheduled for next week.

At a practical level, it is simply not possible for this situation to continue.

Independence and OPCAT

Second, I am very concerned that there appears to be a lack of understanding about the Inspectorate's need for independence.

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 that of 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. 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 direct to Parliament.

Most importantly, the UK is a party to the Optional Protocol to the UN Convention Against Torture (OPCAT) which requires state parties to establish a National Preventive Mechanism (NPM) to carry out independent preventative visits of all places of detention. We are the largest body in the UK NPM and have had a significant role in working with the Foreign and Commonwealth Office to promote OPCAT internationally where it is in the national interest to do so. There is clear guidance from the relevant UN body (the Sub Committee on Prevention of Torture (SPT)) about how that independence should be exercised. OPCAT sets out requirements for the independence of the NPM as follows:

“Article 18:

- 1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.*
- 2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.*
- 3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.”*

In its Guidelines on NPMs, the SPT states:

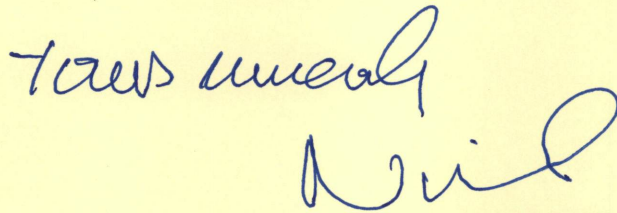
“The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.”

In my view, although the lack of legislative and procedural guarantees of my independence is a weakness, up to now this independence has generally been respected. When concerns have arisen, these generally have been the result of a misunderstanding of our role by officials who are not familiar with it and these have been easily rectified. I had initially assumed the current issues were of a similar nature and would also be easily resolved in the short term leaving my successor time to find a permanent resolution. It appears this is not the case and there may be a more fundamental misunderstanding of our role and so I regret I did not raise this with you directly in our recent meeting.

I have indicated above that I accept the difficult financial pressures on the Department this year and next. I have already offered a reduction in my budget for 2016/17 of £300,000. Subject to the agreement of my successor, this can be achieved by reducing the frequency of our inspections of juvenile YOIs from twelve months to eighteen months and making further risk-based reductions to the number of adult inspections we undertake. The cumulative effect of my budget reductions to date has been to reduce my inspection programme from 108 inspections in 2010/11 to 75 currently planned for 2016/17. I have managed this by moving to a more risk based inspection programme. I have already begun to plan for any reductions in my budget in 2016/17 and, subject to some more detailed work, can bring those forward to make a further savings in 2015/16. This would be the first part of annual savings of £300,000 and is not in addition to those savings and does not take into account any additional salary costs the Inspectorate might incur arising from a handover period with my successor.

In conclusion, it is for you to set my overall budget. However, I do not agree that you should choose the personnel I deploy on individual inspections or how I organise those inspections and nor is it practical for you to do so. Even if my spending request is approved, I do not accept it is a decision for you to make. I was pleased that the Justice Committee intend to have a closer relationship with the Inspectorate and hope they may consider having a role in scrutinising the Inspectorate's budget and encouraging the development of clear protocols that define its relationship with the Department and ensure it has appropriate independence. For the remainder of my term of office, I intend to deploy the staff I require within the budget limits I have. In the event you explicitly withdraw my authority to do so, I will reluctantly have to suspend the inspection programme for the remainder of my term of office and concentrate my resources on finalising reports already in production and preparing options for a reduced inspection programme for my successor to consider.

I am ready to talk to you about this matter at any time.



NICK HARDWICK

cc: Andrew Selous, Parly Under Sec for Prisons, Probation and Rehabilitation
Indra Morris, Director General, Criminal Justice Group, MOJ
Robert Neill MP, Chair, Justice Committee

In conclusion, this report is not a final decision. It is only a recommendation. I will be happy to discuss it with you at any time. I will be happy to discuss it with you at any time. I will be happy to discuss it with you at any time.

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NICK HARDWICK

cc: Andrew Belmont, Joint Control Staff, Finance, Production and Transportation
Miss North, District General Manager, The Quality
Robert Hillier, Environmental Engineer

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