

Submission to the Public Administration Select Committee consultation on accountability of quangos and public bodies

by HM Chief Inspector of Prisons

Introduction

1. I welcome the opportunity to submit information to the Public Administration Select Committee consultation on accountability of quangos and public bodies.
2. This submission sets out the views of Her Majesty's Chief Inspector of Prisons (HMCI Prisons) and specifically addresses the Committee's concern regarding the accountability of public bodies to Parliament and Ministers.
3. HMCI Prisons is an independent statutory role whose responsibilities are set out in the Prisons Act 1952 s5A as amended by the Criminal Justice Act 1982 s57, the Immigration, Asylum and Nationality Act 2006 s46 (1) and the Police and Justice Act 2006 s28.
4. HMCI Prisons is a Crown appointment, on the advice of the Justice Secretary. The appointment is subject to a pre-appointment hearing by the House of Commons Justice Committee. HMCI Prisons reports directly to Ministers.
5. HMCI Prisons has a statutory duty to report on conditions for, and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted). All inspections are carried out against *Expectations* - independent criteria based on relevant international human rights standards and norms.

Structure

6. The committee have indicated that they would like to hear views on the complexity of the public bodies landscape. The statutory basis for the work of HMCIP is set out in very broad terms in the legislation described above. The Chief Inspector is an 'office holder' and technically all the staff who work for the inspectorate are employed by the Ministry of Justice, NOMS or the NHS and are seconded to support the Chief Inspector; their terms and conditions and all other matters relating to their employment are determined by their parent body. However, in practice, the Chief Inspector appoints all the staff who work for him through open competition and staff certainly feel they work for the inspectorate. Other than routine administrative functions, all 'back office' service, including finance, HR, IT support and accommodation is provided by the Ministry of Justice. The Chief Inspector is the accounting officer. There is no board or chief executive although the Deputy Chief Inspector fulfils some of what might be described as a chief executive's function. The inspectorate has a budget of c£4.5 M and employs about 70 staff.

Quite apart from issues of independence which are addressed below, this arrangement has sometimes been an uncomfortable fit and it has been difficult to make the systems and processes necessary for a large department fit the needs of a much smaller dispersed organisation. On the whole, good relationships have overcome these difficulties but they continue to require careful and flexible management.

7. As an organisation therefore, the inspectorate has little in common with much larger NDPBs and arms length bodies with their own formal governance structures and their own self-contained support functions. In my view it is important that any review of quangos and public bodies takes account of their very different structures, size and functions and does not adopt a 'one-size-fits-all' approach.

Independence and governance

8. The need for independence in the designation, powers and exercise of my role has long been recognised by both Ministers and Parliament. My predecessors have worked hard to ensure that they are and are seen to be independent in the way they deliver their responsibilities.
9. It is important that the inspection process is independent from those with operational or policy responsibility for the establishments I inspect because:
 - The closed nature of the institutions
 - The power imbalance between the gaoler and detainee
 - The lack of credibility of the detainee
 - The normative effects of custody

all make the detainee particularly vulnerable to ill-treatment or neglect.

10. After the Liaison Committee's recommendation in 2000 that pre-appointment hearings be held for major public appointments,¹ the Governance of Britain green paper of 2007 proposed non-binding hearings to scrutinise prospective appointments. As a result, the House of Commons Justice Committee was invited by the Secretary of State for Justice to report on my suitability for the role of HMCI Prisons. Among their criteria for determining my suitability to this role was my "demonstrable grasp of the need for independence".²
11. The importance of maintaining the independence of HMCI Prisons was further reinforced by the Justice Committee during its scrutiny of the budget and structure of the Ministry of Justice (MoJ) in 2012.³ The Justice Committee underscored the importance that my role as "watchdog" be independent from the MoJ. In response to concerns regarding the exercise of my independence that I had raised before them,⁴ the Committee called on ministers to establish or revise relevant Framework documents so that these recognise the importance of real and perceived independence.

¹ Liaison Committee, Second Report, 2009-10, *The work of Committees in Session 2008-09*, HC 426

² <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/354/354.pdf>

³ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/97/9702.htm>

⁴ These related to the MoJ's role in my appraisal, as well as the inspectorate sharing the MoJ website, restrictions on my ability to hire staff independently of departmental procedure, and prolonged budget uncertainty. These concerns were raised jointly with the Prisoner and Probation Ombudsman.

12. During the exercise of my role as HMCI Prisons, Ministers and the bodies I inspect have accepted the importance of independence to my role. Some improvements have been made since I raised concerns before the Justice Committee in 2012, with regards the inspectorate's website and procedures for hiring staff, but in practice, however, challenges do remain. In particular, it is difficult to strike the right balance between recognising the independence of the inspectorate and ensuring it is efficient, provides good value for money and complies with high standards in public life.

Complying with the Optional Protocol to the UN Convention against Torture: the National Preventive Mechanism

13. In 2009 HMI Prisons was designated by the government as the coordinator of the National Preventive Mechanism (NPM), the body established in compliance with the UK's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT).
14. The primary focus of the NPM is the prevention of torture and ill treatment in all places of detention. HMIP is a member of the NPM as well as its coordinator, and must implement its NPM role through the exercise of three main powers which bodies designated to the NPM must hold as a minimum:
- To regularly examine the treatment of persons deprived of their liberty in places of detention
 - To make recommendations to relevant authorities with the aim of improving the treatment and conditions of persons deprived of their liberty, and to prevent torture and ill treatment
 - To submit proposals and observations concerning existing or draft legislation
15. A central requirement of OPCAT is that NPM members must be independent of government, and that their functional independence should be guaranteed. Specifically, OPCAT Article 18 stipulates that:

'The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.'

Future proposals

16. In my view, my ability to exercise independence in performing my role as HMCI Prisons requires the introduction of further safeguards. While at an operational level there is appreciation of my independent role, and improvements have been made on some issues, the framework for my role does not fully support my independence from the Executive.
17. A system whereby the Chief Inspector of Prisons is appointed by and reports directly to the ministry that holds operational responsibility for the institutions subject to his or her inspection is by its nature incompatible with full independence. It is my belief that this undermines the UK's compliance with the Optional Protocol to the UN Convention against Torture which requires full independence in the mandates of members of the National Preventive Mechanism.

18. I note with interest recent statements by the Shadow Justice Minister, who set out the importance of further guarantees for the independence from the Executive of the Chief Inspector of Prisons. I think these proposals should be considered further and I very much hope that can be done on a cross-party basis. It is important to be clear that in seeking to distance the inspectorate from MOJ sponsorship, I imply no criticism of any Minister or official in that department. I recognise that even if the sponsorship arrangements changed, I would continue to have close contact with all the departments and agencies with responsibility for the establishments I inspect.
19. I consider that an arrangement whereby HMCI Prisons reports directly to Parliament would act as a safeguard allowing him or her to perform statutory duties to report on the treatment of prisoners and conditions in prisons, as well as other types of detention, with full independence. Furthermore, such an arrangement would allow HMCI Prisons to be accountable for his or her performance and spending of public money, and bring the UK more fully into compliance with the requirements of OPCAT.
20. I hope that you find this information useful and should you wish to discuss this further please let me know.

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11 April 2014