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## Submission to Vera Commission

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# Submission to Vera Commission

Anne Owers<sup>\*</sup>

This paper describes the function and methodology of the Inspectorate of Prisons in England and Wales,<sup>1</sup> and the importance of its role in the independent scrutiny of conditions and treatment in prisons and other places of detention.

## I. THE INSPECTORATE

The office of Her Majesty's Chief Inspector of Prisons was created by statute in 1981.<sup>2</sup> There had been a prisons inspectorate during the nineteenth century, but it had gradually become absorbed into the work of prison commissioners (those running the prisons). Following a judicial inquiry into disturbances in prisons it was decided to re-create the office, with a specific remit to report not on the prison *service* as a whole but on conditions in prisons and the treatment of prisoners.

That remit has tied the Inspectorate very firmly to a practical, human rights, prisoner-centered approach. It is not an auditing or standard-setting body: those tasks are carried out by government auditors, the prison service, and ministers. Moreover, the Chief Inspector, as a statutory Crown appointment, is not a civil servant, working to the agenda of the government of the day. She or he also must never have worked for the Prison Service, and so comes free of any potential links or conflicts. The Chief Inspector is appointed on a five-year term, renewable by mutual agreement.

The Inspectorate's remit has been extended beyond the 138 English and Welsh prisons: we also inspect, by statute, prisons in Northern Ireland, and all immigration detention facilities in the

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1. See HMI Prisons, <http://inspectorates.homeoffice.gov.uk/hmiprisons/> (last visited June 3, 2006).

2. Criminal Justice Act, 1982, ch. 52, § 57 (Eng.).

United Kingdom (UK); and, by agreement, prisons in the Isle of Man and Channel Isles and, increasingly, other jurisdictions. Most recently, we were asked by the Correctional Services of Canada to inspect two of their women's prisons and will shortly be reporting on those inspections. We also inspect the Military Corrective and Training Center (the armed services' only detention facility in the UK) and the Sovereign Base Area prison in Cyprus. Within England and Wales, we inspect privately managed as well as public sector prisons; and that is important, as the overall structure for managing prisons moves to the National Offender Management Service,<sup>3</sup> which states that it wishes to increase 'contestability,' and, by inference, increase the involvement of the private (or even the not-for-profit sector) in running prisons.

I have been the Chief Inspector of Prisons for nearly five years. I am the fifth holder of the office; my predecessors came from the probation service, the diplomatic corps, the judiciary, and the army. I have worked solely in the not-for-profit sector, with organizations working on immigration, law reform, and human rights. I inherited an extremely robust and independent organization, focused on improving prison conditions and with considerable expertise in this area. Around half of the Inspectorate's staff has prior operational experience within the prison system. They know how it works and are alert to the mechanisms by which staff (and prisoners) may try to conceal what is actually going on, but they have also had to do the job they are inspecting. They work with colleagues who come from outside the prison service and can bring a wider frame of reference—which is essential when examining closed institutions, which can easily become self-referential.

## II. METHODOLOGY AND CRITERIA

We have developed a methodology and criteria for assessing real outcomes in prisons which have proven applicable and suitable to adaptation both inside the UK and in other custodial settings. Using

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3. See National Offender Management Services, <http://www.noms.homeoffice.gov.uk/> (last visited June 3, 2006).

definitions adapted from the World Health Organization,<sup>4</sup> we have developed four elements of what we call a ‘healthy prison’ or healthy detention facility: that prisoners or detainees are held in safety; that they are treated with respect for their human dignity; that they are able to engage in purposeful activity; and that they are prepared for return to the community. We assess each custodial facility by reference to those four elements.

In order to reach those assessments we have developed and published a clear, detailed, and transparent set of inspection criteria, which we call *Expectations*.<sup>5</sup> They describe what we expect to find in every aspect of prison life—from reception to release. They also include a detailed examination of the educational, healthcare, and substance abuse provisions in a prison (for which we have specialist inspectors). The published document also lists the evidence inspectors will look for when coming to a judgment against each expectation. The criteria are informed by and referenced against international human rights instruments. We have developed a separate set of inspection criteria for juveniles held in custody,<sup>6</sup> and those held in immigration detention.<sup>7</sup>

I am pleased that this formula has proved successful in identifying real outcomes and causes for concern in relation to those held in all kinds of military and civilian detention facilities, and has been shown to work in other jurisdictions within the British Isles and Canada.

### III. PROGRAM AND FORMAT OF INSPECTIONS AND REPORTS

Our inspection program, and the format of inspections, is a mixture of chronology and intelligence-led inspection, some of it announced and some unannounced. It is important that all of the facilities for which we are responsible are regularly inspected; even

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4. See World Health Organization, <http://www.who.int/en/> (last visited June 3, 2006).

5. HER MAJESTY’S INSPECTORATE OF PRISONS, *EXPECTATIONS* (2004), available at <http://inspectorates.homeoffice.gov.uk/hmiprisons/our-work/> (follow “Expectations” hyperlink).

6. HER MAJESTY’S INSPECTORATE OF PRISONS, *EXPECTATIONS* (2004), available at <http://inspectorates.homeoffice.gov.uk/hmiprisons/our-work/> (follow “Juvenile Expectations” hyperlink).

7. HER MAJESTY’S INSPECTORATE OF PRISONS, *EXPECTATIONS* (2004), available at <http://inspectorates.homeoffice.gov.uk/hmiprisons/our-work/> (follow “IRL Expectations” hyperlink).

the best prison can deteriorate, particularly under the kind of population pressure our prisons are currently experiencing. However, I have limited resources at my disposal. So, we have undertaken to inspect every adult prison at least twice in a five-year period, once as a full inspection, and once as a follow-up to check whether our recommendations have been achieved. Juvenile prisons and immigration removal (detention) centers with more vulnerable populations have more regular routine inspections: twice within a three-year period.

But that is only the baseline. I have the power, at any time, and without warning, to go into any prison or removal center and carry out a full inspection. If our intelligence suggests that a prison is problematic, we will return swiftly. That intelligence could be derived from concerns raised at our last inspection or that have been expressed within the prison service, or at inquests or in press reports. The fact that every governor or director of a place of custody knows that at any time the Inspectorate can turn up, unannounced, at the gate is, I believe, a vital part of effectively inspecting the closed and hidden world of custody.

Most of our full inspections are announced. Prisons know that we are coming, and have a chance to examine and improve their own procedures and policies against our *Expectations*. That can be helpful because it is only by internalizing best practices that they are likely to stick. But it also means, of course, that inspectors have to be experts at digging beneath the surface of recently adopted policies, new paint, and helpful officers. Prisoners are an extremely useful source of information about this; they are, sadly, experienced consumers of prisons and, perhaps surprisingly, reasonably honest about prison conditions. Before every announced inspection our researchers will go to the prison and issue a confidential questionnaire to a number of prisoners randomly selected by us. The questionnaires do not pass through any member of the prison staff. We now have a large database of such information and we can measure prisoner responses in that prison against the benchmark responses for similar prisons, and also against responses from that prison at our last inspection. We also routinely compare findings by ethnicity and nationality.

The questionnaire results provide a starting point for the inspection team when they arrive. A full inspection takes a week and

involves a core team of five inspectors, supplemented by health care and substance use specialists, working in parallel with a team of our colleagues from the education inspectorates, who will assess education and training in the prison under exactly the same criteria as they would use for a school or college in the community. Prison health care, too, is now provided through our National Health Service,<sup>8</sup> and our health care inspectors will be looking for treatment and professional expertise equivalent to that which they would expect to find in community health care.

All inspectors will have their own set of keys, which allows them independent access to all parts of the prison, including prisoners' cells and the segregation unit. They begin by talking to groups of randomly selected prisoners—including a group of black and minority ethnic prisoners. They will then divide up the *Expectations* areas and come to a view on each by observing what goes on, talking to staff and prisoners, and examining all the documents that the prison holds. By this process of 'triangulating' sources of evidence inspectors can reach an independent and accurate assessment of what is actually happening in the prison, which may differ significantly from what managers think is happening.

On the fourth day of the inspection my deputy or I attend, observing, talking, and looking. This allows us to form an overall view, to add to or challenge what the team has found, and to lead a final debriefing which summarizes our findings to the prison's managers and delivers preliminary assessments against our four tests of a healthy prison.

All inspection reports are published;<sup>9</sup> the content and timing of their publication is a matter for me. We send draft reports to the inspected service, so that they can check for any factual inaccuracies, but the analysis and the final decision about any amendments rests with the chief inspector. I have never, in four years, had any pressure from politicians in relation to what I publish and when.

All reports contain recommendations for action which are divided into main recommendations (the critically important things that the

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8. See NHS England, <http://www.nhs.uk/> (last visited June 3, 2006).

9. All such reports are published and available on the Inspectorate's website, *supra* note 1.

establishment needs to tackle), other recommendations (sometimes up to one hundred), and ‘housekeeping points,’ which are relatively minor matters that managers can easily sort out. Within three months of the report’s publication the inspected service must produce an action plan stating whether each recommendation is accepted and, if so, by when it will be implemented. In practice around 97% of our recommendations are accepted, either wholly, partially, or in principle (the majority of the remaining recommendations are matters which require more resources or fewer prisoners). The prison must then send a follow-up report of progress against the action plan.

Unless the inspection has revealed major concerns (particularly in relation to safety or respect) we will return between one-and-a-half and two-and-a-half years later, always without warning, to check for ourselves whether our recommendations have been implemented. We find that around 70% have been wholly or partially implemented; this is a remarkable statistic given the pressure on the prison system, and the changes in management that may have been required.

The ability to carry out unannounced inspections is a core part of our effectiveness, and over half of our inspections are unannounced. We will literally turn up at the gate of a prison or detention center and demand immediate access and keys. Some of our full inspections are unannounced, as are all of our follow-up inspections; and some of those follow-up inspections, into establishments of concern, are longer and more detailed. They take place over an eight-day period so that the questionnaire can be administered and fed back to the team on-site. They involve exactly the same methodology and approach as our unannounced inspections.

#### IV. THEMATIC WORK

The Inspectorate also produces thematic reports into particular areas of prison life that are of concern in order to identify systemic changes that need to take place.<sup>10</sup> We have carried out such thematic work into prison healthcare, suicides in prison, the treatment of women prisoners and juveniles, and the resettlement (often termed

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10. Thematic reports are also published and available on the Inspectorate’s website, *supra* note 1.

“re-entry” in America) of prisoners into the community. All of those reports, over time, have led to significant changes in the management and policies in these areas.

Prison health care is now provided by the National Health Service, instead of being a second- or third-rate service provided by staff that were rarely professionally supervised and sometimes not professionally competent. The management of suicide and self-harm has improved (though we still have unacceptably high rates of both—the latter particularly for women). Resettlement has now become a core task for prisons, and the new National Offender Management Service is specifically focused on providing a team approach toward the prevention of recidivism.

Our most recent thematic reports have dealt with older prisoners, prisoners in court and under escort, and race relations in prisons. Currently, we are working on thematic reports for foreign national prisoners, those held in high-security segregation, and mentally ill prisoners. The last group is extremely important; since the closure of our large mental institutions, prisons have become the recipients of a large number of acutely and chronically mentally ill prisoners who cannot properly be cared for in what is essentially a coercive environment.

## V. OUR INFLUENCE

I believe that the independent Inspectorate of Prisons has played a key role in improving conditions in individual prisons and also in driving systemic change, while ensuring that the prison system is accountable to the public.

At a practical and very basic level we can secure improvements to the living conditions and humane treatment of those in custody. Many times, inspection reports reveal practices which are unknown to those managing the prison or responsible for prison management. Examples include ‘squat-searching’ of prisoners, in contravention of governors’ instructions; covering up of alarm bells; submitting statistics about the prisoners’ time out of their cells or their engagement in activities which inflate and seriously misrepresent reality; and even exposing an alleged assault in a segregation unit which had not been followed up or investigated.



Equally importantly, we can commend and try to extend good practices in prisons, pointing out to hard-pressed prison staff and managers that things can be done differently and better, and showing the public some of the good work carried out in prisons. Good prisons usually welcome inspections as a free consultancy that helps them to continually improve.

But there is also an important role in relation to public accountability. We are the eyes and ears of the public, even though the public may not always want to see and hear what goes on in the prisons. We do not normally think of our prisons as a public service, like our schools, hospitals, and police, but they are, and their effective running is central to public protection and community safety in the longer term.

The publication of regular reports into prisons—and the press publicity that sometimes attends this—is an important part of securing public buy-in and support for good prison management, and for the resources that are needed to ensure that. We can alert politicians and the public to things that the prison system may not want them to hear. Some recent reports into privately run prisons have challenged assumptions that privatization of the prison system is in itself a recipe for improvement. Equally, we have exposed collusive attitudes in some public-sector prisons, where negative attitudes and underachievement have not been challenged. And, by identifying some of the good work done in prisons as well as some of the challenges faced by staff and managers, we have helped to put pressure on politicians to release resources to make the best practices more widely available and to remedy poor practice or inadequate conditions.

## VI. WIDER APPLICABILITY

It is not possible simply to import one model for prison monitoring wholesale into another country's prison system. Any effective system needs to fit the particular legal, political, and cultural framework within which it operates.

Prison services themselves should have robust internal monitoring and management arrangements that drive improvements. It would be quite wrong to assume that those managing and working in prisons

do not have a direct interest in ensuring that prisons are properly and safely run. Prisons that are unsafe for prisoners are usually unsafe for staff, and badly run prisons impact staff as well as prisoners. But these internal mechanisms, in closed institutions, can take for granted what is not acceptable, or ignore what is institutionally inconvenient. Both staff and prisoners can become institutionalized.

For that reason, the new Protocol to the United Nations Convention on the Prevention of Torture and Inhuman and Degrading Treatment<sup>11</sup> requires state parties to have in place independent 'national preventative mechanisms' which can freely visit and report on all places of detention. It is clear that places of custody have the capacity to degenerate into places of abuse of power, and that this is more likely the further away from the public gaze they operate.

Such mechanisms are complementary to other forms of accountability, such as litigation. Litigation is an important and essential safeguard. But it has limitations, sometimes statutory, sometimes, as all lawyers know, because 'you win, you lose.' Successful litigation can lead to changes in the law that legitimize, not change, the complained-of practice. And, of course, a public service can concede on individual cases without addressing the overall systemic flaw. Additionally, a lawyer's access to prisons and prisoners is also limited. Some jurisdictions, including the United Kingdom, have an ombudsman, who can deal with individual prisoner complaints and has access to prisons. But, in the United Kingdom at least, his remit is restricted to individual cases, not to systemic change.

Similarly, pressure groups in both of our jurisdictions have played a key role in highlighting abuses, lobbying politicians, and representing and advocating for prisoners. But, having worked in the not-for-profit sector for many years, I know how frustrating it is to present reports into marginalized people, which can easily be ignored

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11. United Nations: Human Rights Documentation, <http://www.un.org/Depts/dhl/resguide/spechr.htm#torture> (follow "Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" hyperlink; then follow "Declarations and Reservations" hyperlink; then follow "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" hyperlink) (last visited June 3, 2006).

unless the reports fit with current political priorities or are backed by powerful mainstream groups or successful litigation.

There are different forms of independent monitoring. Citizen monitoring committees exist in several jurisdictions, including my own. They are usually groups of volunteers who have rights of access to their local prison and can take up complaints or make reports. They play an important role in linking prisons to their local community, but they may also be limited by their voluntary nature, their experience with only one prison, and the need to remain on good terms with those managing that prison.

## VII. CONCLUSION

I believe that independent inspection—the provision of a detailed, comparative, external, and expert check on places of custody—is an important and necessary complement to these other internal and external checks and accountability mechanisms. Its statutory basis and actual and perceived independence gives it authority; and its expertise provides the government and the public with essential information about the actual working of closed institutions. And, whatever structures or mechanisms are appropriate and workable, recent experience leads me to believe that our tests and criteria are an effective tool for measuring outcomes in places of custody, and that these tests and criteria can be adapted for use by others seeking to monitor such places.