

Public Accounts Committee

Oral evidence: Inspection in justice and home affairs: A comparative study, HC 975

Monday 23 February 2015

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Members present: Margaret Hodge (Chair); Mr Richard Bacon; Guto Bebb; Stephen Hammond; Chris Heaton-Harris; Meg Hillier; Mr Stewart Jackson; Dame Anne McGuire; Austin Mitchell; Stephen Phillips

Sir Amyas Morse, Comptroller and Auditor General, Louise Bladen, Director, and Adrian Jenner, Director of Parliamentary Relations, National Audit Office; and Richard Brown, Treasury Officer of Accounts, were in attendance.

Witnesses: Mark Sedwill CMG, Permanent Secretary, Home Office; Dame Ursula Brennan, Permanent Secretary, Ministry of Justice; Sir Thomas Winsor, HM Chief Inspector of Constabulary; Nick Hardwick CBE, HM Chief Inspector of Prisons; and John Vine, former Independent Chief Inspector of Borders and Immigration, gave evidence.

Q1 Chair: Welcome, and thank you all for attending. I'm sorry that we are a bit thin on the ground, but more people may join us.

We have a really interesting Report, so we are going to see whether we can make some progress. We are going to start much more of a discussion that I think we want to have with you on the independence and the powers of the inspectorate, because that comes up as a key issue. I will start with the inspectors, if I may, so take your choice as to who goes with it. Two of you are leaving. Have you left?

John Vine: I have left, yes.

Chair: Mr Vine has left—in fact, he wrote to us about leaving—and Nick Hardwick has just declared that he is not going to seek reappointment. That makes it even more interesting, because we hope that you will be a bit freer in what you say.

Basically, do you think the way in which you are appointed, the way in which you are accountable and the way in which your budget is determined enable you to be really the independent inspector of the service for which you have responsibility? Who wants to start? John looks as if he is going to go with that.

John Vine: I was appointed in 2008, and it was a unique opportunity to set up an inspectorate from scratch. From the start, I always felt that I had the resources to do the job effectively. The budget initially was £3.5 million; that has reduced, but in line with Home Office budgets, so I have always felt that I have had the resources to provide an effective inspectorate.

I am not Her Majesty's inspector—no royal warrant came with the post. In the legislation, the post was chief inspector of what was then the Border and Immigration Agency, later changing to the chief inspector of the UK Border Agency. The word "independent" was adopted by me, with the agreement of the Home Office and the Home Affairs Select Committee, because what was very important from the outset was to establish independence and a sense of independence, because the inspectorate was born out of a crisis in immigration, which had led to considerable changes in government in 2007. In establishing an inspectorate that followed on from John Reid's White Paper, which was about building confidence in the immigration system, and for it to be transparent and trusted, I was very keen to establish independence from the outset. The way I did that was to ensure that we did very well evidenced and very thorough reports, and that we presented them as factually and as evidence-based as we could to the Home Office. From the outset, I wanted to ensure that we were focused on improvement, because inspection is about improving things.

From my point of view, yes, it was a great opportunity to establish independence from the start. It was very difficult to do that, because there was no tradition of inspection in this area of public policy. When I had been a chief constable, I prepared for inspection by the police inspectorate, but there was no sense of any of that being done when I started inspecting Borders and Immigration—there was no preparation and no culture of it. That has been a long journey, to establish that sort of ethos.

Q2 Dame Anne McGuire: Did the lack of a royal warrant make a difference to how the inspectorate was perceived? Do you think that that would have established an element of credibility right from the beginning, as opposed to establishing credibility through the force of your own personality and drive, and how you wanted to see the infrastructure progress?

John Vine: Yes, I think it would have helped. What happened was that the provisions that created the inspectorate were inserted into an immigration Bill that was passing through Parliament at the time of the foreign national prisoner crisis and when the asylum backlog was exposed, when John Reid came in as Home Secretary. There had also been a push in previous years, or just before the creation of the inspectorate, to consider the amalgamation of inspectorates. I think a number of factors militated against the royal warrant but, in short, it would have helped, yes.

Q3 Chair: May I just take you back to the question? You actually wrote to us when we took evidence on foreign prisoners, I think it was, and there had been a delay in the Home Office publication of your report. So may I go back to the question, because you have a rather interesting

perspective on this? Were you appointed in an independent way? Are you accountable in an independent way? Does your budget give you that independence you need? What I pick up from you is that your independence to me appeared to have been harmed by the fact that suddenly, halfway through your appointment, the Home Secretary decided that she was going to publish the reports, not you, and that she was going to redact, not you—she would not seek your authority. That, I think, undermined the strength of the independence that you thought you had when you took up the job.

John Vine: I was appointed by open selection, by Sir David Normington, and there was no hearing in front of a Select Committee to affirm that appointment, so in that sense—to answer the first part of your question—yes, I felt that I was appointed to be very independent. I remember the advert for the job, which had the title, “Can you withstand the public’s harshest gaze?” That was in the advert for the job, so there was a clear steer about what they wanted. They wanted someone to—

Mr Bacon: They wanted you to run for Parliament! *[Laughter.]*

John Vine: They wanted someone to look independently and to report on the efficiency and effectiveness of Borders and Immigration, and I think that is what we fulfilled.

On the publication of reports, I think the legislation is slightly ambiguous. It can be read in a number of ways, but for five years we had an arrangement whereby I released my reports. Now, I have no difficulty with the Home Secretary laying reports before Parliament. The difficulty I anticipated, which I think came about, was that that then constrains when reports can be released, not least because Parliament is sometimes not sitting for long periods when reports are completed. So that interpretation of the legislation endangers the perception of independence slightly. If it is the legislation’s fault, and the legislation needs changing—

Q4 Mr Bacon: Can I just stop you for a second? We have exactly the same situation with the Comptroller and Auditor General, Sir Amyas Morse, who is an Officer of the House of Commons and who lays National Audit Office Reports before Parliament. He is completely independent, and his budget is determined by Parliament, not by Government. It is true that National Audit Office Reports cannot be published unless Parliament is sitting, but that has never been a serious constraint, and it has never been a matter of any moment or for any comment by anybody. It is really just a matter of a few weeks in August, a couple of weeks at Christmas and a couple of weeks at Easter. The issue is to what extent your independent or “independent”—I do not know whether to use inverted commas or not—reports get tweaked, adjusted, altered or interfered with in any way, shape or form, by others before they are published and after you thought you had finished them. Do they?

John Vine: No. That is not my experience. The powers of redaction by the Home Secretary on grounds of national security are in the Borders Act. That is a matter for the Home Secretary to take a judgment on. Quite clear about that—that is in the legislation. When I was appointed, I knew that.

Chair: But it fetters your independence.

John Vine: If I can just answer Mr Bacon's point, I have never felt that my reports have been altered or tweaked, as you put it, Mr Bacon. The reports go to the Home Office for factual accuracy checking only, to ensure that there is no mistake in fact in them. That is quite normal in an inspectorate regime. I have never felt that my reports have been altered or changed, and I have never felt that I have had any pressure to do that. I have been very clear about that throughout my time as an inspector.

Q5 Chair: I've got to come back to one example. The NAO has one, but in one that I read about—I cannot remember whether it was in the Report or some of the papers around it—they deliberately redacted the number of illegal immigrants who were coming in through Calais. I think that is an issue of public interest and public concern, but for some reason the number was redacted on the grounds that it somehow interfered with national security. Can you give your other example, Louise?

Louise Bladen: We were talking about the juxtaposed controls report from 2013, which was broadly the same time we were working on the Border Force. There was an issue about your report at the time being redacted and us having very similar material in the NAO Report and publishing that.

Chair: So that does seem to be about redactions. You may be right that, legally, this is in the power of the Home Secretary, but there were redactions, and I can't for the life of me see how either of those examples could ever be justified in terms of national interest. They reduced the strength of your independence.

On the timing issue, to come back to Richard's point, one can understand a bit about the timing from looking at our brief, but a 163-day delay in reporting on an inspection of immigration enforcement activity in London and the west midlands—Operation Nexus—can hardly be justified on the grounds that Parliament was not sitting. That was a deliberate delay to weaken the impact of your report.

John Vine: As I said in my letter to you, I was not happy with that situation.

Q6 Chair: What about the redactions?

John Vine: Redactions were a matter for the Home Secretary if she took a view on national security.

Q7 Chair: How can this be about national security? We now know how many illegal migrants get over from Calais, because we had it in our Report, even if you did not put it into your report. We now know what actually happens on the borders when they are short-staffed. Where on earth has that impacted on our national security, which we all care about passionately?

John Vine: Yes, well, I do not disagree with the sentiment. Redaction has to be used very sparingly. The whole purpose of inspection reports is that they are transparent and open.

Q8 Dame Anne McGuire: I got the sense that Mr Sedwill was beginning to get a bit tense in relation to some of Mr Vine's answers. I was just wondering whether he would like the option of explaining why I got that impression.

Mark Sedwill: I was not at all tense about the answers that Mr Vine was giving, but the Chair made a couple of assertions that I would want to challenge. I can do that either now or later.

Q9 Dame Anne McGuire: While you are thinking about that, could you also explain why it would take 163 days to publish a chief inspector's report and why Parliament was used as an excuse for not publishing sooner than 163 days?

Mark Sedwill: I do not think we did use Parliament as an excuse in that case. Indeed, that report, which was on Operation Nexus, was a largely positive one. That is the assertion I wanted to challenge—that somehow we were seeking to lessen the impact of a report that was largely positive.

Q10 Chair: Why did you not publish it?

Mark Sedwill: We have been working through this over the past year and I have talked to the Committee about it before. We have now agreed that the reports will all be published within eight weeks. I do not think it was satisfactory to find ourselves in the situation that we did, where when we should publish was unpredictable. I remember talking to the Committee about the options we were considering—whether there should be a fixed deadline, whether we should publish in batches, whether there was a way of doing it in a way that was predictable—and that is what we have now agreed.

With that particular report, I do not know why it took 163 days. When the Department of State takes responsibility for putting anything out, we get caught up in the general Government management of when information is released. I have found myself caught in that in other situations as well—for example, in releasing information relating to some of the child sex abuse file inquiries, where we just got stuck on Government procedures about release. That is why we needed to find a solution that guaranteed a fixed period for publishing the chief inspectors' reports—so that we do not have that question about whether we are in some sense managing the news.

Q11 Dame Anne McGuire: Why should it even take eight weeks to publish an independent report, unless, as we have already alluded to, there are particular issues that may impact on national security? If the report is independent and the inspectorate is truly independent, surely it should be within their jurisdiction to decide when to publish those reports? Eight weeks? I would imagine there are some speed readers in the Home Office who could go through a report much quicker than eight weeks. Given the fact that it does not have to go through some of the cross-governmental issues that you have already identified, why should it take eight weeks?

Mark Sedwill: Most inspectorate reports take about that time—I cannot remember the exact numbers in the NAO Report. By the way, that is after the final report is agreed. As John has

said, all we do is fact check. The report itself is signed off by him and it is his report, subject only to potential national security redactions. We have agreed that it will be eight weeks. There is a second question, which is whether he or his successor should publish it themselves. That is essentially a matter of the Act, and the Act does actually say that the Secretary of State shall lay these before Parliament. That is in the Act. Of course, it is entirely up to Parliament to change the Act.

Q12 Chair: That's an interpretation.

Mark Sedwill: That is our legal advice.

Q13 Chair: I will quote from John Vine's letter: "I sought my own independent legal advice from Treasury solicitors, who concluded that the Home Office's interpretation of the legislation was neither the obvious nor the only interpretation of the law and that my view was also valid".

Mark Sedwill: In the end, the Home Secretary is the Secretary of State who has to lay these reports before Parliament. That is what the Act says. That is what our legal advice says. She set that out in a written ministerial statement last year.

Q14 Chair: Why do you treat the two of them so differently?

Mark Sedwill: We don't.

Q15 Chair: You do. Sir Thomas Winsor can publish all his reports when he likes. If anything is redacted, he redacts. If you decide to redact anything, he has to approve it. It is completely different.

Mark Sedwill: It is. Sorry, the point I am challenging, Chair, is that it is not that I decide to do that; that is what the legislation says. The legislation was passed at various different periods. The Borders Act 2007 that established the independent chief inspector of immigration, says both those things—the Secretary of State shall lay and the Secretary of State shall redact on national security grounds. It is different for the chief inspector of constabulary. We are just applying the legislation; it is not a choice that I have.

Q16 Mr Bacon: The real issue is why the legislation was framed in that way. One can only surmise that, looking at it, people said, "My goodness. We don't want to go down the road of having someone as independent as the inspector of constabulary. God, what a mistake that was! Let's dial it down a bit." That is what happened, isn't it?

Mark Sedwill: I think Mr Vine has already answered that. This was a new inspectorate created in our time. It is not really for me to answer for what was put into the legislation, but it was the creation of a whole new inspectorate in an area of public policy that had never been inspected. To be fair to the drafters of the legislation, they were advancing the cause of inspection at that time.

Sir Amyas Morse: I want to be fair to them as well in this small question. You had been proceeding on the basis that you had understood the legislation differently for some time. What caused the change of mind that led to the legal advice being taken? I do not quite follow why it was all right for a few years and then it was suddenly not all right.

Mark Sedwill: I can't recall the event. I seem to recall that there was a hearing of this Committee at which the reverse question came up: you asked why I had published one of the chief inspector's reports—

Q17 Chair: I think we asked why you had delayed publishing.

Mark Sedwill: Exactly. That was during a period when we did not apply any Home Office intervention in the publication of the reports. It was during the period when they were entirely within the gift of the chief inspector. I remember that we had to clarify that point. It was probably prompted by that, but I cannot recall exactly.

Q18 Dame Anne McGuire: I am not sure that is quite the answer to the question. Why did you suddenly decide that what had effectively been acceptable for a number of years was no longer acceptable, and we then had these inordinate delays where it appears that parliamentary time off was being used as an excuse? What actually happened?

Mark Sedwill: I do not want to overplay the parliamentary calendar. Mr Bacon is absolutely right about that: it might affect things by a week or a couple of weeks here and there, but it does not affect the overall period. I am not going to defend—

Q19 Dame Anne McGuire: Okay, we'll bank that one and hold you to eight weeks.

Mark Sedwill: You can hold us to eight weeks. That is what we have set out. It was set out by the Home Secretary in a written ministerial statement. That is our interpretation of the legislation. Parliament may change the legislation and it may change the terms of the chief inspector, but that is our interpretation of the legislation.

Q20 Mr Bacon: Mr Vine, do you think eight weeks is okay? Is it short enough?

John Vine: My view has always been that the report should come out as soon as is practicable. I was happy with the arrangement that was in place.

Q21 Mr Bacon: The one where it was basically in your gift?

John Vine: Well, it had worked for five years, with everyone's agreement.

Q22 Mr Bacon: Yes, and it turned out that suddenly the Home Office woke up and said, “Whoops, it’s unlawful,” which apparently it had not been before.

Dame Anne McGuire: Or uncomfortable.

John Vine: I could understand if it is unlawful.

Q23 Mr Bacon: If it is, but as you said, there was legal advice saying that that interpretation is not at all obvious. Your letter to us said: “The majority of my reports since January 2014 have been subject to significant delays between the submission to the Home Secretary and being laid in Parliament. I consider that lengthy delays in publishing reports risk reducing the effectiveness of independent inspection, which depends to a large extent on timely publication of findings, and it is contributing to a sense that the independence of my role is being compromised.” Those are quite strong words. What I am really asking is: is eight weeks acceptable or would you prefer a shorter period? As soon as is practicable is as long as a piece of string. If you could choose the length of time, what would you choose?

John Vine: I think eight weeks is a reasonable period. When we were publishing under the old regime, we sent the reports for two weeks’ reading to the Home Secretary and we then tended to publish after the following two weeks. That was still a shorter period than is proposed.

Q24 Mr Bacon: Do you mean four weeks in total?

John Vine: Yes, four weeks generally in total. There would have been some minor alterations to that, but it was a general rule. Of course, inspector reports are based on evidence that degrades after time.

Q25 Mr Bacon: Sure. Four weeks would be long enough if you wanted to be effective, would it not, Mr Sedwill?

Mark Sedwill: I do not think that there is a specific period. We have said that eight weeks is the limit. It is not that we will do them all in seven weeks and six days. We have just said that we will guarantee—I cannot remember the exact word in the WMS—to publish within eight weeks. As soon as is practicable is entirely sensible.

Q26 Chair: Have you done any work on trying to ensure that the two inspectorates are aligned in their approach? It is all very well telling us—the Home Office, more than anybody else, produces legislation ad nauseam—but you could very easily produce a little clause in one of your annual Bills saying “We’re going to treat the inspector of immigration in the same way as we treat the inspector of police.”

Mark Sedwill: Not that I’m aware of. Their jobs are—

Q27 Chair: Why not?

Mark Sedwill: Well, their jobs are somewhat different. One is inspecting what is now part of the Department, and even when it was an agency it was exercising functions directly on behalf of Ministers. The Secretary of State is, in law, the person who makes immigration decisions, and officials make those decisions on her behalf. The police are constitutionally independent. There are 43 forces.

Q28 Chair: Why does that change the nature? One of the general things that we are going to pull up is that that shouldn't change the nature of the inspection role on a public service. Okay, one goes to the Home Secretary and the other goes to crime commissioners, but that shouldn't make any difference to how we inspect.

Mark Sedwill: I am not really arguing with you, Madam Chair. You just asked whether we had done it, and the answer is that we haven't. Legislation comes forward at different times, usually in different political contexts. Quite often, oversight arrangements of various kinds, as we found in other areas, are part of a parliamentary debate, and they are often part of a debate between the two Houses. Legislation is a more organic process; it isn't that we have codified all the legislation or focused on this as a particular priority. The two inspectorates do an effective job for us and for the public. It hasn't really registered as a priority to align the way that they work because they have worked pretty well.

Q29 Chair: As a comment, I don't think you will find any disagreement in this Committee on the role of inspection. I don't think it is a partisan issue.

Mark Sedwill: I am not suggesting it is.

Q30 Stephen Phillips: I want to come back to where we started so that I can try to get an answer to the questions that I think we were asking, which weren't just to Mr Vine—they were to Mr Hardwick and Sir Thomas, too. I will start with you, Mr Vine. The position that you formerly held was signed off by the Home Secretary. Is that right?

John Vine: That is correct.

Q31 Stephen Phillips: Is that true for you, too, Mr Hardwick? Is it true for you, Sir Thomas? Essentially the Home Secretary signs off the appointments?

Chair: Or the Justice Secretary.

Stephen Phillips: Sorry. The Secretary of State in your case.

Nick Hardwick: In my case, I think it is actually the Queen on the advice of the Prime Minister on the advice of the Justice Secretary. I think it is probably the Queen.

Q32 Stephen Phillips: Right, but effectively the Justice Secretary or the Home Secretary has a veto. My question to all three of you is twofold. First, given that that is the case, how on earth can you possibly be seen to be independent of the Departments that you are effectively supposed to be inspecting? Secondly, wouldn't it be much, much more sensible if those appointments were made by Parliament and that you reported to Parliament, in the same way that the Comptroller and Auditor General does, rather than reporting to the Departments? Surely that would be a much stronger regime of independent inspection. I can see the horror on the faces of the two permanent secretaries in front of us, but let's leave that to one side. Surely you would agree that that would be a much stronger inspection regime than this ridiculous system, in which you are not really independent of the Departments at all. Certainly, you cannot be seen to be independent because you are appointed by the Secretaries of State for the very Departments that you are inspecting.

Nick Hardwick: I agree. To your original question of whether my inspectorate is independent enough, my answer would be no. That is partly because of the budget issues. In the end, the Department that is responsible for the bodies I inspect also sets my budget. I feel that my budget is pretty much constantly under review. Although I am perhaps making some pretty robust statements about prisons and other places that I inspect, I know that the Department is looking at my budget at the same time. I have no complaint about the way in which I have been treated or the way in which Dame Ursula and her colleagues deal with us—they have been very helpful—but that possibility clearly exists.

Q33 Austin Mitchell: Does that mean your budget has been changed or cut down to influence you?

Nick Hardwick: It has never been cut down to influence me, but clearly that possibility, or the threat of it, exists.

On the question of appointment, as the Chair said in the introduction, I decided that I was not going to go through a public reappointment process, because I had been very clear about the need for the inspectorate to be independent and I felt that it just would not be credible if, during a lengthy public appointment process, on the one hand I was expected to speak with candour about what I was finding when I inspected, which I know is sometimes unwelcome to Ministers and officials, while at the same time I am asking those same Ministers and officials to give me a job. I didn't think that it would be credible to go through that process.

Q34 Stephen Phillips: Would you agree that it creates a clear conflict of interest during the appointment procedure?

Nick Hardwick: Absolutely. If that is not a conflict of interest, I don't know what is.

Q35 Stephen Phillips: Also, do you agree that the fact you are dependent upon the Secretary of State for your budget creates a clear conflict of interest?

Nick Hardwick: I don't think that's right. My view, as I have said publicly before, is that I agree with the recommendations of the Public Administration Committee that certainly in the case of my inspectorate we should not be accountable to the Department that is responsible for the bodies we inspect. We should be accountable to some other mechanism; it might be something like the Justice Committee, or it could be the Cabinet Office, but not the Ministry of Justice.

I will just make other points, if I may. I don't want that to be interpreted as a criticism of any of the officials I have worked with. Far from it; they have been very helpful, and I appreciate that. Secondly, it has been a privilege to do the job. I am not talking in my own interest. My time has come to an end; I am sorry about that, but so be it. Nevertheless, for the future it is very important, particularly with closed institutions that people can't see of their own accord, that you have an independent body that can describe candidly what we are seeing. I think that the overall structures are inhibiting that. I know that the Public Administration Committee talked about the politicisation of the appointments process. There is a danger of that, and in the end I don't think that it's in anybody's interests that we do that.

Q36 Chair: And what about reporting, because I hear that you should report to Parliament rather than to—?

Nick Hardwick: Reports are published entirely on my authority. We fact-check in the normal way, but they are published as quickly as I can read them. If there are any delays, it's—I look at them all. I look at every single one.

Q37 Chair: And you are happy with the current mechanism?

Nick Hardwick: Yes, the current mechanism is fine, but it's not—

Q38 Chair: So it's different from the John Vine—?

Nick Hardwick: It is, but it does need to be looked at. My legislation pretty much says, "Report on the treatment of prisoners and the conditions in prison"—that's it. There are no safeguards in it. So how we work is, I think, on the whole custom and practice rather than—There are no statutory or regulatory safeguards, and there may be an argument for putting some of those in place—

Q39 Mr Bacon: Just for clarity, does the Home Secretary not sign off your reports at all?

Nick Hardwick: No—neither the Home Secretary nor the Justice Secretary. What they do sign off, certainly in terms of the Home Office, is the responses to our reports, and I think they do that with some care and I am grateful for it. But they don't sign off the reports themselves.

Q40 Dame Anne McGuire: Just for clarity, could you tell the Committee what date is the legislative basis for your role? If you don't have it, it doesn't matter.

Nick Hardwick: It is the 1981 Criminal Justice Act¹, as amended by the Immigration, Asylum and Nationality Act 2006, and the Police and Justice Act 2006, and the 2011—

Dame Anne McGuire: I didn't need all that detail.

Nick Hardwick: I did my homework.

Q41 Dame Anne McGuire: 1981 is about 30 or 40 years—

Q42 Stephen Phillips: Can we come to Sir Thomas and maybe ask all the same questions, if you don't mind?

Sir Thomas Winsor: Thank you. As for the questions about independence, there are two aspects to independence and both of them have to be satisfied. They are legal independence—what does the statute say?—and behavioural independence—how do you actually behave in practice?

There is no question but that the inspectorate of constabulary is independent of the police; independent of the Government, subject to the qualifications that I will give you; independent of police and crime commissioners—independent of everyone. None of those can interfere in any way with the content of our reports.

Q43 Stephen Phillips: But they could try to influence them, by saying that, as you came to the end of your tenure—certainly, a Home Secretary could. One can foresee circumstances where a Home Secretary could effectively communicate to you—I am sure it would not be in writing—that, “If you want to be reappointed, I don't want a critical report on such and such a constabulary.” While you no doubt do everything you can at the moment to be independent, that makes your independence illusory in the eyes of the public, and that is not desirable.

Sir Thomas Winsor: In this room 13 years ago I was asked the same kind of question.

Stephen Phillips: Forgive me—I was very young at that point and not in the House.

Sir Thomas Winsor: So was I. I was an independent rail regulator at the time. I said that I did not wish to be reappointed after my five-year term—I was only two and a half years into it—had expired. I think that made me stronger, undoubtedly. Nevertheless, the process of appointment is the appointment by the Secretary of State. It is approved by the Prime Minister and then it goes for royal appointment. I had the advantage that nobody could question my political impartiality, because I was appointed as rail regulator by John Prescott, and as chief inspector of constabulary by Theresa May, so I have the advantage of that. When she appointed me, she could not have doubted my attitude to independence, because, particularly during the collapse of Railtrack in 2001, and then

¹ Note from witness: The Act referred to is the '1982 Criminal Justice Act'

the financial settlements that I gave the railway industry in 2003, I went through the fires of hell on independence. I was threatened with emergency primary legislation to take me—

Q44 Stephen Phillips: I do not want to stop you, but you are tilting at windmills. No one is questioning your independence.

Sir Thomas Winsor: No, I understand that.

Q45 Stephen Phillips: We are much more interested in the theoretical question of whether the office is independent.

Sir Thomas Winsor: I get that. Thank you. The analogy with judges is a relevant one. The most senior judges have to have their appointments signed off by the Lord Chancellor and the Prime Minister. They are political animals.

Q46 Stephen Phillips: Hold on. They are appointed by the Judicial Appointments Commission. There is no way that the Lord Chancellor and the Secretary of State for Justice is going to say, “I am not appointing X as a High Court judge.”

Sir Thomas Winsor: They do have that right, actually. The Judicial Appointments Commission comes first, and therefore there is a check and balance. This is a legitimate model for consideration by the Committee. There is a check and balance there. The Judicial Appointments Commission will go through a very thorough process, and there are no political criteria in how they go about their job. In 2004, one of the House of Lords Committees I think made a recommendation that economic regulators—you could extend this to inspectorates—should have a similar process. Indeed, you could go further and say that, rather than have pre-appointment hearings by parliamentary Committees, they could be given vetoes. I would not personally be in favour of that. Our accountability is not just to Ministers. It is principally to the public, to Parliament, to the media, and to the service that we inspect, and the best protection against interference with your independence is just to do a really good job.

As far as what we do is concerned, it is the case that, under the Police Reform and Social Responsibility Act 2011, the Home Secretary has the function of approving our inspection programme. That is a legislative change, because, under the Police Act 1996, HMIC only had to consult the Home Secretary on the inspection programme for the year. Now we have to obtain their approval. I thought that was rather puzzling, but, in practice, it has not been a difficulty, because, to everything we have proposed, the Home Secretary has said, “Yes, we want you to do that, and we would like you to do quite a lot more as well.” The main constraint on independence, if it were exercised, is the control over the budget, but this is public money. It could, I suppose, be a budgetary control given to Parliament instead of to the Secretary of State. I have no real complaint about that. I have just had a 66% increase.

Q47 Chair: Yours has gone up, of course. You have had a 66% increase. The rest of them have had a bit of a cut.

Sir Thomas Winsor: More than a 66% increase in work load, I would say.

Chair: The interesting thing is why on earth that got an increase.

Q48 Stephen Phillips: Let us go back to where we were. I think you said that the greatest threat to independence is the control that the Department has over the budget.

Sir Thomas Winsor: It is a potential threat, because, in my experience, it has never been a difficulty.

Q49 Stephen Phillips: So one thing you would agree with is that it would be sensible to take the setting of the budgets away from Ministers.

Sir Thomas Winsor: That would be one way of doing it, but somebody has to take the decision. At the end of the day, it is going to be politicians, whether it is politicians in the Executive, Government, or politicians in Parliament, but yes, it would put the thing at greater distance, because the Home Secretary is responsible for the police and the lion's share of the Home Office budget is spent on the police. We have to get realpolitik into this as well, though. The police spend £13 billion a year of public money and my inspectorate spends £22 million checking how efficiently and effectively that £13 billion is spent. If a future Home Secretary were to say, "I want to clip your wings, or amputate your wings. We don't want inspection of that £13 billion any more. We're going to cut your budget in half," they would effectively be saying that they want to close their eyes to a material part of the efficiency and effectiveness of the spending of £13 billion, and politically that might be very difficult to do—not impossible, but it would be quite difficult. I think that is a relevant factor as well.

Q50 Stephen Phillips: Mr Vine, do you want to come in on the questions that I asked Mr Hardwick and Sir Thomas?

John Vine: It is an interesting theory because, uniquely, as has been pointed out in the NAO Report, I inspect a Government Department. When the post was established, there was an agency there. That agency developed, morphed and changed, and largely it changed and was de-agencyfied because of some of the work that I did. In the past, when a contentious report reached the media, it would be the chief executive of the agency that responded to me; it was not the Department. For the last couple of years, of course, it has been a Minister, because now the interface is direct with the Department. That slightly changes the climate in which I operate, comparing us with other inspectorates.

As I have said before in this hearing, I do not feel as though I have had anything other than a constructive relationship with the Home Office, but it has been one at a distance and has ensured that I am able to report independently anything that I want. As Sir Thomas mentioned, I have put a

plan to the Home Secretary. My legislation says that I have to consult the Home Secretary; she does not approve the plan. I have worked for three Home Secretaries; none has made any differences to the proposals that I have put forward. My appointment was made overseen by the Civil Service Commission, so there have been lots of safeguards in place. Before I retired I was reporting directly on a Government Department.

Q51 Stephen Phillips: Do you agree with me that you would be seen, certainly by the public, to be much more independent, and you would feel much more independent, if you were reporting to Parliament?

John Vine: I think your independence is established by what you actually do. I do not think that anybody would argue that this inspectorate has had a tremendous impact—

Q52 Stephen Phillips: The trouble is that we never know what is going on behind the scenes as members of the public, or indeed as Members of this House, do we?

John Vine: I think that the public need to have confidence that they believe that an inspectorate is acting independently.

Q53 Mr Bacon: Can I ask a supplementary question? Mr Vine, you used the phrase, “changes the climate”. Do you think that the change of climate you described adds weight to Mr Phillips’ argument about the importance of perhaps setting the budget in a different way? Is there a corresponding increase in the power of Mr Phillips’ argument about doing the budget differently, perhaps through a parliamentary commission, because of the change of climate?

John Vine: I would say that there is weight, yes.

Mr Bacon: Thank you.

Q54 Stephen Phillips: I just want to go to Sir Humphrey, in the form of Mr Sedwill and Dame Ursula, and ask them why it is a bad idea that supposedly independent inspectorates that are inspecting Departments run by Ministers should be run independently by Parliament, rather than by the Department. Come on, give us the best Sir Humphrey reason as to why that is terrible.

Dame Ursula Brennan: There are a couple of things to say, of which the most important from the Department’s perspective is what is working practically. At present, our perception as a Department is that Nick Hardwick is a completely independent inspector of prisons. All the inspectorates have to get their money from somewhere. Virtually every arm’s length body of the Ministry of Justice has a conversation at some point saying, “Couldn’t we deal direct with the Cabinet Office?” usually because they think that somehow more money would be forthcoming that way. There is a practical question about whether a discussion that was held differently would result

in a different amount of money; realistically, I think it wouldn't. The point that you are discussing, therefore, is one of perception, rather than the practical amount of money that would be in question.

We have been doing a lot of work in the Ministry of Justice about the way we sponsor these arm's-length bodies to seek to be really clear about what the role of the sponsors is. We think that at the moment this works in a way that enables the inspector to make his report independently. As it happens, we have reduced budgets in the Ministry of Justice, but we have reduced the inspector's budget by a lot less than we have reduced the main budget of the Department because we thought that it was tremendously important to carry on having that independence.

Q55 Stephen Phillips: You are coming here from the Ministry of Justice. Isn't *nemo iudex in causa sua*—no one should be a judge in his own case—the maxim by which you should live as well as everybody else, Dame Ursula?

Dame Ursula Brennan: There is just one other point that I would like to make, and I can see that Nick would like to respond as well. At bottom, the most valuable thing about the inspections of prisons is that something practical happens as a result of those inspections. One of the things that inspectorates and the bodies that they inspect always have to cope with is the balance between sufficient independence to be able to be fearless in what you say about the service that you are inspecting, and a sufficient understanding of the service that you are inspecting that what you say will land and people will do something about it. That requires, it seems to me, some kind of linkage between the inspectorate and the Department.

Chair: We want to come to impact—

Mr Bacon: Wait a moment. Dame Ursula is talking about impact.

Chair: Yes, but we don't want to talk about that yet. Let's stick to the appointment process and come back to that, because I think it is a different issue.

Nick Hardwick: In my case, I inspect bodies that report to a number of different Departments. I inspect immigration detention as well as prisons, and I do not think that there is a problem with my relationship: the fact that I am not sponsored by the Home Office does not affect the impact of my inspections of immigration detention. So I do not think that that link is necessary to have impact.

The other thing I would say is that when credibility is called into question, ironically, is not when I am being critical of an establishment—people get that that is independent—but when I am saying, "This place has really improved," or "This place is doing well." That is when they say, "You are part of the Department, so you would say that." Actually, I think it would do the Department favours if we were not linked to them, not because we would be more critical—

Mr Bacon: But because it would give more credibility.

Nick Hardwick: —but because at times when we were being positive, people would not necessarily be so suspicious. You would make the relationships with the Department work whether you had a direct sponsorship or not.

Q56 Chair: I want to talk about two more issues on appointment and then move to impact, because I think that that is the other big thing. On appointment, we have heard a lot. Nick Hardwick says that he is not going to reapply, because he thinks that that will undermine his independence during the application process.

Nick Hardwick: That is correct.

Q57 Chair: Why, Mr Sedwill, are you appointing John Vine's successor for as short a period as two years?

Mark Sedwill: It is partly to do with where we are in the cycle. When one of my predecessors appointed John, he was appointed for three years, and he has had two two-year extensions, I think. Sir Thomas was appointed for three years and has been given a five-year extension, although we moved the start date to fit with the new parliamentary cycle. With the appointment of John's successor, David Bolt, the appointment has come within three or four months of the election. We did not have the results of the NAO Report and we did not know how far-reaching the NAO Report or this inquiry might go in terms of the structure of the inspectorate, so it seemed prudent just to go for a relatively short appointment. There are rules, but there is also the spirit of public appointments. It is a controversial area and it is quite close to the end of the Parliament. I would expect, on the assumption that there is no structural change, that as in the other cases, if David Bolt wanted to continue, there would be early advice—

Q58 Chair: I love the obsequious idea that you so listen to our recommendations. We wish that that were true.

Nick Hardwick: Chair, may I add something? My successor is only being appointed for three years as opposed to five years. That is the worst of all possible worlds. You take a year or so to get up to speed, and then you either won't want to apply, as in my case, or you will be looking over your shoulder saying, "Is the Secretary of State cross with me?" It is a really bad mistake.

Q59 Meg Hillier: Mr Sedwill, it seems to me that what you are saying is that if you get someone in for too long, they become too powerful a counterbalance to the Home Office. Can I say that, flattered though the Committee and the NAO are by the idea that this inquiry could be so far-ranging that the Home Office would change its juggernaut approach to the appointment of an inspector, it seems to me extraordinary? With due respect, I have to say that I am not sure that Departments generally change their behaviour in that way before we issue our findings.

Mark Sedwill: Well, I have to say that a series of assertions is being made in this hearing that I have to challenge.

Meg Hillier: Okay, challenge me, then.

Mark Sedwill: First, the assertion that inspectors become too powerful and a challenge to the Department. John was appointed for three years and within that three years had already established a very strong profile for himself and his inspectorate, and was reappointed—

Q60 Chair: But he has decided not to go for the reappointment, partly—I may be putting words into his mouth—because you are hauling back the post.

Mark Sedwill: May I finish the point? He was reappointed twice and has served under three Home Secretaries. We have just reappointed Tom Winsor, about six months ago, which will take him through most of the next Parliament.

I think we just have to get a little bit away from the Westminster conversation. What matters is the point that you were just referring to, which is the impact. When there is a report that is relatively positive, it gets no attention whatsoever. When there is a critical report, particularly in the immigration system, we have UQs, parliamentary hearings, the word “chaos” all over the headlines and John finds himself invited on to the “Today” programme.

Q61 Stephen Phillips: Which is why you appoint for two or three years. You want to give them a road test, really, to see whether they are going to be too difficult to work with.

Mark Sedwill: That is just not true.

Q62 Stephen Phillips: Really?

Mark Sedwill: And Mr Vine established a very strong—

Q63 Stephen Phillips: So why were you appointing for five years previously and now you are appointing for two or three?

Mark Sedwill: We didn't, Mr Phillips. We appointed for three and had two two-year extensions. I am sorry, but the facts are just different to those you are setting out.

Q64 Dame Anne McGuire: Can I just go through your time scale? You said that Sir Thomas Winsor was appointed six months ago, on a five-year contract. Six months ago, you did know that the general election was going to be in May 2015, but you said that one reason why you have appointed John Vine's successor is that it is at the end of the Parliament. When is Nick Hardwick's appointment going to be made?

Mark Sedwill: I don't know. It will be made—I think the current schedule is before the end of March.

Q65 Dame Anne McGuire: Before the end of March, and it is for three years. Is that right?

Mark Sedwill: It will start in July, for three years.

Q66 Dame Anne McGuire: Right. So that comes at the tail end of a Parliament. I suppose I am asking you why we have gone from five years, which is acceptable and I have no problem with that, six or seven months before the end of a Parliament, to a reason why you could not appoint for more than two years because it was close to a Parliament, and Nick Hardwick has just said that his appointment is for three years at the tail end of a Parliament. Frankly, there is an inconsistency in your justification for short-term appointments.

Mark Sedwill: Well, these things are a matter of judgment, Dame Anne, but there is a standard—

Q67 Dame Anne McGuire: Yes, and that is why I am questioning. *[Interruption.]* I am sorry, Mr Sedwill, if you find this tedious.

Mark Sedwill: I'm sorry, I'd like to finish the sentence, if I may. There is a six-month convention around public appointments around a general election. Mr Winsor's appointment was made before that. Mr Vine's successor's appointment is being made within it.

Q68 Dame Anne McGuire: Mr Vine's successor has been appointed for two years. Is that correct?

Mark Sedwill: That's right.

Q69 Dame Anne McGuire: So why has Nick Hardwick been appointed for three years?

Dame Ursula Brennan: The question about how long to appoint inspectors for relates partly to whether you choose to say there is a long first appointment, at the end of which somebody may or may not choose to reapply. One of the things to bear in mind is that the Office of the Commissioner for Public Appointments has issued guidance in the last year or so to say that they would expect people to reapply at the end of their appointment and not for people to be reappointed to public appointments. So there is a tension between a desire to ensure that people are not continuously reappointed in public appointments and this question about inspectors.

The second point is the extent to which people wish to apply for roles for longer periods. One of the questions that arose for us in relation to our difficulties around the probation inspector was that we first advertised it for five years, and the advice we got when we went out to see who we could get as an inspector was that, actually, lots of people did not want to tie themselves for that long to an initial appointment. So that was the reason we changed that appointment to three years, and it is the reason why we have changed in the case of the prisons appointment.

Q70 Meg Hillier: They can resign, presumably, during the five-year period.

Dame Ursula Brennan: They can, but people really don't want to take up an appointment with a plan of resigning before the end of their appointment.

Q71 Chair: This is not the best set of arguments. It would have been easier if you had just said to us that it was a political decision, because in a way that is fine. We might disagree with it, but this just seems daft.

I want to ask you, Dame Ursula, about what I think is the final issue with appointments, unless others have questions. It may not surprise you that I want to discuss Paul McDowell. Out of the five inspectors that we are looking at, only one will be in post—you are losing four out of the five, which is a bit careless. Paul McDowell's wife was—what was she? I want to get this right.

Louise Bladen: Deputy managing director.

Chair: She was the deputy managing director of Sodexo, and I understand that she has recently become managing director—

Dame Ursula Brennan: Of the justice bit, yes.

Q72 Chair: Sodexo has won six of the probation contracts, and it is working with Nacro, of which Paul McDowell was chief executive before he became the inspector.

Dame Ursula Brennan: That's right.

Q73 Chair: All that is very worrying in terms of potential conflicts of interests. When did you first know about the links between Paul McDowell and Sodexo?

Dame Ursula Brennan: I think that the process with Paul McDowell started when he was selected for interview in August 2013. I was probably told at the time that one of the candidates—he has been completely transparent with us from the start about his relationship and that his wife worked for a company that would be interested in justice business. When the interviews were held, I am pretty sure that someone mentioned to me at the time the question about him being related to someone in that company. We took legal advice; because it was an Office of the Commissioner for Public Appointments appointment, when we interviewed Paul McDowell, we took legal advice about his position should he get the job. He was chief executive of Nacro, so it was clear that he would have to sever his connections—he would obviously cease to be chief executive of Nacro. At the time, when he was interviewed and then appointed, we had not actually reached the stage of companies qualifying for bidding for the transforming rehabilitation service.

Q74 Chair: But you had a policy decision.

Dame Ursula Brennan: Sorry?

Q75 Chair: The policy direction was agreed. You knew that you were going to go for—

Dame Ursula Brennan: Oh yes, we were absolutely on that path.

Q76 Chair: You were implementing the policy.

Dame Ursula Brennan: We absolutely were, and we took advice about what we should do in relation to a person whose wife worked for a company that might conceivably be, and was likely to be, bidding for the work. Bear in mind that we did not know at that point whether the company would qualify in the first place, whether they would then be successful as a preferred bidder, or how many contracts they might go on to win. There was a process lasting about 12 months between us appointing Paul McDowell when his wife was working in a deputy role in a company that was bidding for business, and the events that came at around the same time: he had been in post for about 12 months and it became clear that the process of the competition had led to Sodexo winning a significant number of contracts—six—and his wife was promoted. At that point, he was really clear that the arrangements we had put in place when he was appointed in case there was a conflict of interest would not work with such a significant conflict of interest, which is why he has terminated his employment. However, in the period when we were appointing him, we took legal advice and concluded that it would have been improper to exclude him on the basis that his wife's company might conceivably qualify for work, and if they did qualify, that they might win some work, because we looked at arrangements that we could put in place so that he would not be involved in inspecting if they did get some work.

Q77 Chair: Okay, thank you for that. Let us take it step by step. One assumes that the Justice Secretary knew as well.

Dame Ursula Brennan: The Justice Secretary was certainly involved in the appointment, so he would have known, yes.

Q78 Chair: Why did you not tell the Justice Select Committee, which is the Committee authorised to hold a pre-appointment hearing?

Dame Ursula Brennan: There was a pre-appointment hearing, and the Cabinet Office drew up a protocol saying, "This is the information you should supply to Select Committees for pre-appointment hearings." We had never actually given conflict of interest information to—

Q79 Chair: Why not?

Dame Ursula Brennan: We simply followed the protocol, and we did not supply it. The protocol was amended not long after that to say—

Q80 Mr Bacon: It was in “Coriolanus”, wasn’t it? “Proceed by the procedure”? Even accepting what you have said—and I do accept it—about how it would have been improper in the circumstances until, and so on, isn’t it obvious that that kind of stark fact is one that would stare you in the face as a fact you should disclose?

Dame Ursula Brennan: No. As I said, we looked at the delicate handling of the arrangements for the competition where the bidders for the competition and the competition bid were being handled in such a way that anyone who was outside managing it was not involved with what was going on. Our legal advice suggested that it was very important to avoid any suggestion that we were pre-impling something about what might happen in relation to Sodexo, if we mentioned that. As I said, in general, we had not covered conflicts of interest. We simply went by “This is the information we supply to the Select Committee.” As soon as it became apparent that the arrangements we put in place would not be sustainable because of the scale of the business that they had won, and because his wife had been promoted—so two events happened that caused that change—we immediately notified.

Q81 Chair: But you knew Sodexo was a big player for justice services. You knew that. We knew that. Everybody knew that.

Dame Ursula Brennan: We did indeed, but—

Q82 Chair: Actually, to be honest and to put you back into the context, at that time, you were desperately looking around for anybody but G4S and Serco, given what they had done on the tagging contract. It was absolutely obvious to all of us sitting here, when we talked about you early on, that Sodexo was going to pick up a substantial amount of this business.

Stephen Phillips: Well, that it might do, and that there was a strong likelihood that it would.

Dame Ursula Brennan: There was absolutely a possibility that they would win some work, and Paul McDowell was completely transparent about his wife’s arrangements.

Q83 Chair: Except to the Justice Select Committee.

Dame Ursula Brennan: That was not his—I just want to be really clear. He has acted—

Q84 Chair: He could have volunteered the information.

Dame Ursula Brennan: He could have, but the arrangement under which we supplied information to the Justice Select Committee simply followed the protocol. I would just like to say that he has behaved in a completely—

Q85 Stephen Phillips: Is the protocol exclusive, Dame Ursula, or did it say, “This is the minimum set of information that you must provide when there is pre-appointment scrutiny”?

Dame Ursula Brennan: It simply said, “This is the information to give to the Cabinet Office”, and that is what we did. There was no further consideration about it. It was simply, “We always give a standard set of information that does not uncover conflicts of interest.” That is what we did in this case.

Q86 Meg Hillier: Perhaps we are coming at it from a particular perspective, because we have to declare all our interests. I have been on the other side of the table with a husband who is working, and have had to declare interests. You can get conflicts with these things, but if it was such a big potential conflict, I would have thought it would have been the obvious thing to declare. It is quite common to go to Committees, realise the old protocols have not worked so well and declare because it seems the right and sensible thing to do to get it out there, so it is not hidden. Sunlight is a great disinfectant. If there is nothing to hide, then why not talk about it? That is what puzzles me.

Dame Ursula Brennan: The thing to bear in mind is that the competition process—the process of transforming rehabilitation—was lengthy. The interviews were held in August—

Q87 Meg Hillier: But his wife was always working for this big company—

Dame Ursula Brennan: What she was working on at that time was bidding for business. What she was going to be doing as a role in Sodexo was not clear—

Q88 Chair: To be honest, Dame Ursula, she was deputy, and then she stepped up to managing. It is not that big a jump. Deputy is pretty important. What Paul McDowell said is this: “My wife and I do not discuss issues which it is inappropriate for us to discuss.” If that the case and there is a Chinese wall in their relationship, it is all the more important for this to be out in the open. You obviously disagree with that, don’t you?

Dame Ursula Brennan: I disagree because, as I said, the process of all of this taking place, in those 12 months, was before anybody awarded a contract to anybody. As soon as the contracts were awarded to Sodexo, Paul McDowell himself immediately said, “This is not tenable.” They won the contracts and his wife’s promotion happened within a few months of that. He immediately said that they had put in place arrangements that he would exclude himself from inspecting Sodexo, if it won a contract. As soon as that became apparent—all the while until then, it was not a conflict of interest, but a potential conflict of interest.

Q89 Chair: I think that this will help you, Meg. He produced a report on the probation services, which was to inform the Secretary of State’s decision making on the share sale for the privatisation. He produced that report on how the probation service was to be privatised, from

which his wife's company stood, if it won the contract, to make hundreds of millions of pounds. He did not stand back from that; he provided the advice to the Secretary of State, with nobody apart from you—

Stephen Phillips: In other words, there was a clear conflict of interest already present, Dame Ursula.

Dame Ursula Brennan: At the time he was advising us, he was advising us on the state and readiness of the probation service. The company that his wife was working for had not won any contracts at the time—

Q90 Stephen Phillips: Is that a document that you published, that report on the state of the probation services, or is it a document that was used internally by the Secretary of State to inform how the contracts would be let?

Dame Ursula Brennan: I think that report was published.

Q91 Mr Bacon: You did not finish your previous sentence. When you said “readiness”, did you mean the readiness of the probation service to have contractors? Is that what you were going to say?

Dame Ursula Brennan: It was not readiness to have contractors; it was actually about the split between the national probation service and the 21 community rehabilitation companies.

Q92 Chair: From which his wife stood to and has proven to benefit from.

Dame Ursula Brennan: He made a number of critical comments.

Q93 Chair: That makes it even worse, actually. The way that they decided to privatise—a privatisation from which his wife stood to and subsequently did benefit—was decided on advice from him, despite that potential conflict of interest.

Dame Ursula Brennan: It was not decided on advice—

Q94 Stephen Phillips: That advice was prepared to inform that decision.

Dame Ursula Brennan: It was one of many pieces of evidence that were produced.

Q95 Chair: Do you regret anything about this episode?

Dame Ursula Brennan: I regret that the net result has been that he spent a year doing work and producing work—there was some good work on the inspection of youth custody—and I regret the fact that it has resulted in a person who would have been a great probation inspector having to terminate because, now that we have the contracts in place, it would be inappropriate for him to do that job.

Q96 Chair: You do not think there was anything wrong.

Dame Ursula Brennan: I do not think that the process we went through was wrong, no.

Q97 Chair: Do you think that there was anything wrong with any of the conflicts of interest right the way through? You stand by that. I am shocked, if you are saying that. I can understand, “We made a mistake. We got it wrong.” I can get that; that is what happens in life. But to say that allowing him to hold that position right to 2 February this year when he finally resigned—I cannot see how you can say that that was right.

Dame Ursula Brennan: I think that the protocol as it stands, whereby we would reveal that conflict of interest earlier to the Select Committee at a pre-appointment hearing, is helpful. On future occasions, that would be a useful thing to do, but we were abiding by the regime we had in place at the time.

Q98 Meg Hillier: Dame Ursula, if you stopped the average person on the streets of Hackney and explained that two people with high-profile careers in a sector want to have good jobs, that is fair enough, but surely the problem was that he wanted this high-level job while his wife had a high-level job in a potentially conflicting area. That was always going to be a problem. It seems to me, from what you have said—correct me if I am wrong—that the Department took legal advice to ensure that it was not too hard on the guy, rather than looking at the best outcome for transparency, openness and effectiveness.

He has the right to apply for a job that, if he had any sense, he should not have applied for in the first place—I am sure that it was a great promotion, a great job for him and perhaps he was very good at it; I do not doubt what you say—but there was a conflict of interest. It happens to a lot of people in public life. Where they have conflicts of interest, they have to address that beforehand and decide not to apply for certain things because of that conflict. Would you do anything differently next time? Have you changed any of the rules—perhaps Mark Sedwill can answer this as well—for anything that happens across Government, so that when someone declares that level of interest there is some sort of conversation to say, “This is really not going to work”, at the very least, and maybe something more substantial if those gentle chats don’t deliver?

Dame Ursula Brennan: Two things. As I said, I think the change in the protocol, whereby conflicts of interest will surface publicly through the pre-appointment hearing, is a good change.

Q99 Meg Hillier: I recognise that that is a good change. It is one step.

Dame Ursula Brennan: Secondly, we didn't take legal advice about protecting Paul McDowell's position; we took legal advice about the appropriate thing to do. Bear in mind that the competition had barely started when the decision was being made, and that it was 12 months before we reached the conclusion.

Q100 Meg Hillier: Sorry, but would you have taken that legal advice if Paul McDowell had not applied for the job?

Dame Ursula Brennan: The legal advice was about conflicts of interest. It wasn't about protecting him, in terms of conflicts of interest. It was about finding the appropriate way for us to proceed. It wasn't, "Let's take some advice about how to protect Paul McDowell, because he has applied." It was, "A person who has applied has this potential conflict of interest. What is the appropriate way to proceed?"

Q101 Meg Hillier: But it's so complicated that the easiest thing would have been for him not to have applied, or to have had the discussion at that point.

Dame Ursula Brennan: Well, many things might have happened in the 12 months between the point at which we made the appointment and the point at which we made those commercial decisions. The Justice Select Committee, after we wrote to them again when it became apparent that the conflict of interest was not manageable, wrote and said, "I repeat what the Committee said about his suitability for the job and his abilities, and I dissociate myself from any attack on his integrity". So the Justice Select Committee were really clear that he had behaved quite properly throughout the process.

Q102 Meg Hillier: I give the man credit for going quickly—presumably with no salary—when it all happened, but I think it could have been foreseen. It is perhaps the sort of thing that those of us in elected office think about a lot more than other people. There are jobs that I would have not taken, or that my other half would have resigned from, in order to manage that. That is just normal, I would have thought.

Dame Ursula Brennan: The business of managing conflicts of interest, where the conflict exists, is absolutely common practice. It is quite common in public appointments that at the point at which you make the appointment there is a potential conflict of interest or a conflict of interest because of something that exists at the time.

The issue here was that there were two uncertainties: what would happen to his wife and what would happen to the competition. Both those things could have gone in either direction, which would have resulted in no conflict arising. We would have been excluding him on the basis that those two possibilities were going to land up in the same place.

Q103 Meg Hillier: How are you covering his job now, and what is it costing?

Dame Ursula Brennan: We have an acting inspector covering the job now, and we are going to advertise it.

Q104 Meg Hillier: How much is the acting inspector costing? Is it funded from within the Department?

Dame Ursula Brennan: It is from within the Department, yes.

Chair: Yes, but it's extra, because he's got six months.

Q105 Mr Bacon: I want to ask Mr Vine a question before I unfortunately have to go off and do a piece of delegated legislation in a moment. Mr Vine, you said, "I'm in the odd position of having to inspect a Government Department." Can you expand on that slightly? Do you mean, as opposed to inspecting an Executive agency, or what?

John Vine: Yes. It is reflected in the Report. One of the big features that now exists with the role that I formerly had was that my reports directly impact on the Home Office. It is obviously a consequence of the immigration function being brought back into the Home Office, as it was when the IND existed in 2007.

Q106 Mr Bacon: I just thought that there is a direct analogue. When the National Audit Office reported on the foreign national prisoners affair and the management of failed asylum applicants in 2006, it referred to the Immigration and Nationality Directorate in its Report. The analogue is that the Comptroller and Auditor General reports on Government Departments, Executive agencies and the whole gamut of public expenditure to Parliament. He is funded—this is Mr Phillips's point—by a commission of Parliament, which decides what his budget is completely independently of anybody else, although it takes advice from others, including the Treasury. It makes a decision, then tells the Treasury what size cheque to write for the National Audit Office, and there is complete constitutional separation. That is not to say that the National Audit Office does not live in the real world or that it hasn't thought it wise to cut its budget in some places—in fact, it started doing so some years before some Government Departments because it wanted to be trim. Are you saying that that type of arrangement might be of wider application elsewhere and that it might be appropriate for various inspectorates?

John Vine: It might be. The fact is that, since the inspectorate was created against the background that it was, the landscape has changed. It has changed largely because of the reports that we have published, which have had an impact, on creating Border Force and bringing the immigration function back into the Department. That means that the reports that I have produced—some of which have been very positive, others of which have not been so positive—really come hard and fast to the door of the Home Office. While, as I have said previously in this hearing, I have not had any difficulty in my relationship with the Home Office—I have some concerns about publication, which we have been through—I do think it leaves the inspectorate in a slightly different position from most other inspectorates here. It would be presumptuous of me to compare the border and

immigration inspectorate with the National Audit Office, but, in that respect, there is perhaps a similarity.

Q107 Mr Bacon: Mr Hardwick, will you answer the same question? Do you think the constitutional architecture I have described would be applicable to other inspectorates in a way that would be helpful?

Nick Hardwick: It is certainly what I would like to see for my inspectorate. I am not quite in the same position as the immigration inspectorate. I am inspecting one Executive agency of the Department who sponsors me. The Secretary of State takes a very direct interest in the work of the Prison Service at quite a detailed level. He certainly takes some of my recommendations to heart in different ways, as he tells me so vigorously. So I think we should be separate; there should be no suggestion that I have to look over my shoulder and think about the impact of what I am saying on the Department, other than in terms of the question, “Are they doing what I want?” That should be the question in my mind, not “What is this going to do to my budget?”, “Can I recruit the staff I want?” and so on.

Can I just make two other comments? Whatever constitutional arrangements you have, as Sir Thomas was saying, the way you conduct yourself in the role is probably more important. Secondly, it is not just the big things that matter; it is also the little things. The Ministry of Justice is a large bureaucracy employing thousands of people. I am trying to run a much smaller, dispersed organisation. Sometimes, just the structures of a big organisation do not fit with what I am trying to do. It is nobody’s fault, and we sort of make it work, but that is really difficult. I think we would be more efficient if we could be separated out and we had a similar arrangement to the NAO.

Q108 Chair: I want to come on to impact. Are you on appointment still?

Sir Amyas Morse: Yes. I just want to ask a question. Something we did not raise in our Report is a code of practice. I really do not doubt the honourable behaviour of all the inspectors, but I am not quite sure whether you are covered by the civil service code or what. We were having this discussion, and I was not quite sure, if somebody says to you, “This is not allowed under the rules,” and you say, “I’m going to have a look at the book that tells me what they are”—one might say that if you need to look in a book, you have a problem, but let’s set that aside for a minute—what rules we are talking about. That is not a cavilling point; it is quite a significant question, but I am not sure what the answer is.

Dame Ursula Brennan: There are, of course, the seven standards of public life.

Sir Amyas Morse: Are these gentlemen civil servants? Is that what you are saying?

Nick Hardwick: No, we are not. Perhaps I could add that one weakness of the current arrangements is the risk not just that the Department interferes in things it should not interfere in, but that nobody is interfering in things they should interfere in. So, in terms of governance arrangements, if we were breaching some rules, would we get held to account in a way people do not think affects our independence? Or if we were, for instance, being frivolous with the money,

would the governance arrangements work well enough, or would the proper distance the MOJ want to put between us and them—they want to preserve our independence—be an impediment to proper accountability for the practicalities of what we do? That is another reason why it would be healthier if we were moved out of the Department, because we could then be challenged on the things we should be challenged on.

Q109 Chair: There are two options: you do it all under the Cabinet Office, when you could learn from the best and get some uniformity of approach, or you do it through Parliament.

Can I move on to impact? I am not leaving you out, Sir Thomas, but inevitably I have more material from the one resigned and the two resigning inspectors than I have from the man who is still in the job—and wants to continue in the job, which says something. John Vine, in an interview with *The Independent* that I saw, you said that you still believe that the system is beset with problems—poor management, lax record keeping, inconsistent decision making. I have picked out those three as I think we round this table would concur wholeheartedly with those observations. You have been saying this now for however many years you have been around there—plus ça change. So what is it that needs to happen to secure improvements?

Nick Hardwick, in June you blamed political and policy failures for dangerous overcrowding, and then in your October report you reported that prison policy, along with staff shortages, population pressures—I am probably taking a bit of liberty with your words—and legal highs were all contributing to serious problems in prisons, including a 69% rise in the suicide rate, from 52 in 2012-13 to 88 in 2013-14. Then you go on to say, looking at Oakwood, that there are plans to open a number of large establishments in the coming year: “I recommend that Ministers undertake and publish a review of the difficulties Oakwood and other new prisons experienced after they opened and ensure the lessons learned are factored into plans for the opening of other new establishments.”

I am giving those as two examples of where one might say your impact would be less than you would have wanted, and I want you just to talk about that a little bit, and how you think there could be improvements in the way that the inspector function works to get a better impact out of the recommendations you make.

John Vine: From my point of view, I would say that we have had a tremendous impact in a number of different ways. First, in a very simple way, there is a lot more information in the public domain—as a result of my inspection reports—about borders and immigration than there ever was. Many of the stakeholders that I have dealt with, whether the airline industry, the shipping industry, asylum and refugee groups or the university sector—myriad stakeholders—have welcomed the fact that they can now find out about what is actually happening. The reports have put information into the public domain that enables people to hold the Home Office and the immigration authorities to account.

The reports have also led to direct changes in the immigration structure. The report on border control, which identified weaknesses at Heathrow and inconsistency at the border, led to the separation out of Border Force structurally, but it has also resulted in much more consistency in

border checking across the UK. When I did my investigation into border controls, commissioned by the Home Secretary in 2012, the 12 recommendations were all accepted, laid before Parliament and have led to much greater consistency of checking at the border.

I looked at the way visas are issued and there has certainly been an improvement in the quality of decision making in visa posts across the world. Of course, the report I did on the follow-up of the asylum backlog led to the abolition of the agency and the whole immigration function being brought back in. So I do not think that anybody could argue that we have not had an impact in that respect.

Where I think there is still tremendous room for improvement is in the areas I outlined in my annual report to Parliament, laid in December. There needs to be far more concentration on getting the basics right consistently. The three immigration directorates need to work together—rather than be separate immigration directorates, there needs to be oversight of where the synergies are between those directorates. There needs to be much more quality assurance by managers of what is happening. It should not need an inspector to go in to find some of the things that I have found and published. It is just about good management. I think it's partly because, to provide an effective service in this area, we need managers who will stay the course in operational posts and have good professional knowledge and leadership skills. In general terms, I am not sure that the civil service does that. A lot of civil servants like to move on— they like to move into policy roles. They see that as much more of a career progression. Getting good people in the front line with the proper management and leadership skills, and having consistency of approach are important. At the end of the day, although I have not commented on resources in many of my reports because you can always do more with the resources you have, if we are to have 100% checking, we need enough properly skilled staff to do the job effectively.

Q110 Chair: It's a bit scary to discover just last weekend that one of the girls who left the UK to go to Turkey and possibly on to Syria travelled on her sister's passport, isn't it?

John Vine: Well, yes, clearly, if that is what has been revealed.

Q111 Chair: Why are you leaving, if you're having all this impact?

John Vine: I decided that I would leave at the time of my sixth annual report, and I thought it was a good opportunity to hand over to my successor so that he or she could be in place to present an inspection plan for a new Administration. My third contract was due to expire in June. I anticipated that, with purdah cutting in in March, there would be little I could publish, and I thought that this was a good time to hand over. After six and a half years and, before that, eight and a half years as a chief constable, I want to do something else.

Q112 Chair: Nick Hardwick?

Nick Hardwick: On the two specifics that you mentioned, first, on the wider climate of what is happening in prisons, one thing that is absolutely right in the NAO Report's first finding is what it

describes as “the profound cultural impact of regular inspection”. I didn’t invent the way we do it, I just took it over, but there is no doubt in my mind that a consistent set of standards, and establishments knowing that we are going to turn up again and again, over decades now, to check the same thing, and that we will publish what we find and that it will be exposed, have a profound impact. They say to us, “Things have got worse, but they would be a lot worse without you providing that shield of standards”. Interestingly, I had a letter the other day from the Prison Governors Association, saying that it had a motion at its last conference to ask us to reduce our standards and that it had been rejected unanimously. They wanted us to keep saying what we were saying and doing what we were doing because it helped them fend things off.

Of course, we would like to do more. Just on that general point, I feel very frustrated that almost nobody now goes to prisons and immerses themselves in them in the way that my team and I do. We have a real depth of knowledge about what is happening. If I were starting again, I would do more to use that. We could do more to spread good practice and try to draw some lessons together. We might need a tiny bit more resources to do some of that, but we could do more of it. It is a bit of a wasted trick and I would do more if I could. If I had the time, I would do that.

Oakwood is quite a good example. There are two things about that. First, we have just published a report on Oakwood. Some of the press coverage of it was unfair because the people there had worked like maniacs to improve it and I take my hat off to them. They had made real improvements. There is a long way to go still, but a lot of people right down on the shop floor, as it were, did really well. I would not want to take credit away from them, but they would say that our last inspection helped them with that process and provided them with a platform to act. However, it is the people on the ground who do it.

On your point about learning lessons, I do not want to lose this. I am frustrated at the response to this. A critical factor about the prisons that have failed is not that they are run by G4S or that they are big, it is that they are new. It takes too long to get places up to speed and working properly. We could look at what happened to Thamesmead, what happened to Oakwood when it opened, what happened to Isis, and what happened to Doncaster some time ago. There are some common factors there; learning that could be applied to new prisons when they open in future. I am a bit frustrated. There is a reluctance to do that because people do not like to admit that anything ever goes wrong. We could do that better. There are lessons to be learned. There is money to be saved, apart from anything else. Some of that is about how you organise it; some of it is about how you commission those early stages. That is our frustration; that it is a missed opportunity. I hope that other people will take that forward in future.

Q113 Chair: Do you want to say something about impact, Sir Thomas? I do not have any quotes, because you have been even more discreet than the others.

Sir Thomas Winsor: The inspectorate of constabulary now carries out the greatest level of reporting directly to the public in terms that they can understand than it has ever done in its 159-year history. We tell the public about the performance of their police forces in terms that they can understand. That leads to elected representatives, police and crime commissioners, and the Home Office, and just public opinion applying real pressure on the police to improve. It does lead to improvements in policing, and I can give a number of examples. If these improvements to policing

take place in efficiency and effectiveness, it means that we can have more and better policing for the same money or less money. That will protect children and vulnerable people, and it will enable the police to be more effective and therefore spend more time on their primary purpose, which is preventing crime, and therefore preventing people from becoming victims. The more prevention the police can do, the more money will be saved, because almost all the costs of the criminal justice system are incurred downstream of the offence being committed. Overall—this is a very general point—inspection can lead to the material improvements in police efficiency and effectiveness, which saves money but, more importantly, saves lives from being devastated by crime.

Q114 Dame Anne McGuire: Will the 65.9% increase in your budget relate to the annual inspections, or will other elements be included in that new spend?

Sir Thomas Winsor: The increase is to enable us to do what is called the PEEL programme, which is police efficiency, effectiveness and legitimacy. It enables us now completely to reconfigure and re-engineer the inspectorate so that our baseload work is the annual inspections going to every one of 43 forces, looking at the same things every year and determining for local people whether things are getting better or worse and how well money is being spent. That will be our baseload work. On top of that we will do thematic reports into particular problems that have arisen—most recently, for example, on crime recording, child protection, domestic abuse, undercover policing, etc.

Q115 Stephen Phillips: One of this Committee's principal functions is to look at value for money. Both of you, Dame Ursula and Mr Sedwill, have these inspectorates working under you. You both have very good civil servants, excellent economists, who carry out impact assessments as to what things you are proposing will achieve in the future. Neither of your Departments measures the impact of the work these inspectorates actually do on the bodies that they are inspecting. Why not?

Dame Ursula Brennan: One reason why that would be difficult is that inspections of individual prisons—

Q116 Stephen Phillips: The answer is that it is too difficult, is that right?

Dame Ursula Brennan: No. It is not that it is too difficult—

Q117 Stephen Phillips: Let us answer the question that I asked to start with, Dame Ursula, and then you can explain why.

Dame Ursula Brennan: We evaluate the impact of the inspections on the improvement of the prisons, but it is difficult to identify how much of the improvement is down to the visible result of the inspection, and how much is down to something to do with the fact that there is a standard. In the case of prisons, there is an agreed standard that they measure themselves against. Whether

an inspection happens or not, prisons are seeking to move themselves up the ranking against that standard. So it would be difficult to say—in the case of Oakwood, say—“Did this inspection result in the movement of the prison?” because Oakwood knows what the standard is, knows that an inspection will come at some point and is working towards improving itself. So it is quite difficult to separate out that—

Q118 Stephen Phillips: You have explained that it is quite difficult; I understand that. The question I asked, if you would, please—this is all I want an answer to at the moment—is: why don’t you measure the impact of what the inspectorate that Mr Hardwick was heading up is doing?

Dame Ursula Brennan: I am not sure in what way we would do that. We measure—

Q119 Stephen Phillips: So is the answer “It’s too difficult”? Is that the answer? That’s all I’m asking.

Dame Ursula Brennan: I don’t know whether it is too difficult or whether it just would not be productive to try to differentiate out how much of an improvement in a prison is down to inspections—

Q120 Stephen Phillips: I have now got two potential answers: “It’s too difficult,” or, “It’s not productive.” Is it one? Is it both? Just what is the answer to the question that I am asking, Dame Ursula? We’ve had this before. You are coming to give evidence to this Committee; please listen to the question and please give me an answer.

Dame Ursula Brennan: I don’t know how we would do an impact assessment of the impact of prison inspection reports other than what we already have, which is to measure the improvement in individual prisons.

Q121 Stephen Phillips: Mr Sedwill, you know the question that I am asking. Why don’t you do the impact?

Mark Sedwill: Because I don’t see that assessing the separate impact of inspections would actually tell me anything useful, compared with actually implementing their recommendations.

Q122 Stephen Phillips: One of the things it would tell you is whether or not the money you’re spending on the inspectorates is money well spent, which is where I came at this question from.

Mark Sedwill: I understand that; I mean, it might, but in the end the inspectors themselves bid for budgets they set. The NAO—Amyas and I had some correspondence over this, and I think it is genuinely quite difficult to assess the VFM of inspectorates. But if you want to think about the resource question, when Sir Thomas and I looked at the proposal from the inspectorate of

constabulary to increase their budget, we looked—not in a scientific way—at the expected impact that we would get in terms of better public reassurance, more detailed inspections of forces and the budget that would be required for that. We are not doing a separate, VFM exercise; we are trying to look at impact when we look at that. If I can put it the other way around, when we looked, John suggested he could maintain his impact, but with slightly fewer resources and reducing the number of inspectors; so again, it is a conversation of that kind, rather than a sort of formal assessment.

Q123 Stephen Phillips: Do you think it might be worth while, in the light of this question, or actually this line of questioning, to explore the possibility of whether on a regular basis—perhaps annually—you could have a look at value for money, in terms of the impact of these inspectorates on the Department?

Mark Sedwill: I would like to take it away, Mr Phillips, because what I am really interested in is the impact of implementing their recommendations. That is our focus, really, rather than what the specific role of the inspectorates is, not least because I would not expect us necessarily to make significant decisions off the back of that analysis, but I am definitely happy to reflect on it.

Q124 Meg Hillier: I was a Minister in the Home Office when Mr Vine was an inspector and I have been in opposition, so I have been on both sides of the fence, so to speak. It seems to me that excellent reports have come out, with some genuine attempts by Ministers and civil servants to do some good things in immigration, but basically the same problem is there: there is a lot of very slow processing. There are mixed decisions. I have still got constituents who have been waiting a lifetime, nearly—well, for the children it is a lifetime. They are getting to going to university and they can't because they have not got their situation settled. That backlog is still there, despite the inspection reports. What is it that is stopping those repeated inspection reports actually delivering a result? Is it not just down to money in the end, and partly political will—that all of us, whatever political party, never want to chuck enough money at the problem to solve it all? Or is it that we do, but it means you pull it out of another area? Isn't that really the truth?

Mark Sedwill: You're never going to get me to say—

Meg Hillier: I know you're not resigning, so you're not going to say that.

Mark Sedwill: Well, you're never going to get me sitting here saying that I could not do with more money, more people, more time, more bandwidth, etc, or that I could not do a better job, of course. But we live in the world we live in and we are in period of austerity now.

Q125 Meg Hillier: Okay, forget the money; I agree with what Mr Vine says: it is about management and the level and skill of management.

Mark Sedwill: I agree with that and I think Mr Vine set out a list—I won't rehearse it again—of significant improvements that have been made and that we can attribute directly to the work of him and his inspectorate, and large parts of the border and immigration system have improved.

Q126 Meg Hillier: There are bits of the system that Mr Vine highlighted as improving. A lot of what he highlighted was about structural change, however, and there was a debate about whether that would lead to improvements. He made recommendations; the Home Office changes structures.

Let me give one example. It comes from a long time ago, so you may tell me that it is not relevant. When I was a Minister, I read a letter published in a newspaper. An MP was cross that the letter had gone out to a constituent in my name. I read the letter in the newspaper and thought, "I'm sure I didn't send that letter out." I was right; it had gone out in error without my signature or sight. It was an inappropriate letter. After a repeat problem, we discovered that a lot of the staff in the Department were not literate enough to write proper letter. For me, as a Minister, it was very frustrating. I knew that this was a problem before it was unearthed; we had repeatedly raised concerns. By this point it had become a management problem, so all the staff had to be retrained, which took not just months, but much longer; it went beyond the time when I finally left and is probably still going on. Those staff had been served poorly by not being well managed, and the whole system had served everybody badly because of those problems. That was not rocket science. It is great that Mr Vine has looked at this and shone a light on it, but it should not have taken an inspectorate to pick up those problems—and they certainly should not still be happening; there are still problems now.

Mark Sedwill: I don't think that problem is there any more—

Meg Hillier: Hopefully by now it has now gone.

Mark Sedwill: I think this is the point, Miss Hillier. Inspectors do shine a light. One of my frustrations is when an inspector comes across something that our management have not identified themselves. If that happens, I take action with the management concerned, because it should not be the case that these things come as a surprise. We are dealing with a system that has been through many problems, however, and I genuinely think it is improving.

Meg Hillier: Constant restructuring.

Mark Sedwill: It is not just the restructuring. John Vine referred to the operating mandate and the 100% check at the border that was introduced directly following one of his reports. I think that's right, isn't it, John? There is an increase in the quality and quantity of checks at the border as a result of an inspection report. Those improvements are telling. If our controls are compared with those of other countries, they bear up pretty well, notwithstanding all the problems, which I entirely acknowledge.

Chair: Can we move on, because this is not on inspection?

Meg Hillier: The stuff about processing is still not dealt with. It is sexier to do the border controls, and politically more palatable, than to deal with poor constituents in Hackney who have been waiting for a decade or 15 years to find their status settled and who have been living in absolute hell and limbo.

Q127 Dame Anne McGuire: May I ask Nick Hardwick whether it is frustrating for him to hear Dame Ursula say that it is not productive to evaluate the impact of his reports? What does that say to him?

Nick Hardwick: To be honest, I accept that it is difficult to work out the impact. As I have said before, I am cautious about attributing impact in respect of the people on the ground who are delivering things. I want to make this point: I do not think that the most important part of our impact is the reports and the recommendations. I think that the most important part is the cultural impact. We have these standards, and while people are working within their own prism, they know that we will turn up at some point; they do not know when but they want to be ready. Success for us is not going to a place and finding lots of things wrong; it is when we go somewhere and they have done it right before we get there because of the prospect that we might turn up. That is what warms the cockles of our hearts—and that applies to the other forms of work we do. If we go somewhere and find that it is really terrible, it is a bit of a failure; we should have got there sooner and spotted it before. Success is when people do it right because they know that we are coming. In the same way, if we had known two years ago what the National Audit Office was going to be looking at, I would have had it all in place; I would have worked to achieved things before it got there. If the National Audit Office came back every two or three years asking the same questions, you can bet I would have got it right. We have that impact on the places we inspect.

John Vine: Just very briefly, Chair, I would support what Nick has said. What has happened with the Home Office and the immigration space is that they are much more mature in terms of preparing for inspection. That is a real triumph for inspection because they are looking in advance of inspection to put things right. What is what I did when I was a chief constable and I knew that the police inspector was going to visit. That maturity is leading to improvements in itself. The fact that I propose to go somewhere actually makes things happen behind the scenes. Meg Hillier is right in the sense that, very often, on the downside, process takes over from people standing back and seeing the wood for the trees. The report I did on nationality and citizenship, which was released before Christmas, was a classic example of that. The requirements of the British Nationality Act were not being complied with because it was a process of “Let’s get the job done” but someone at a senior level should be sitting back and asking, “What are we achieving here?” There is improvement. It is more maturing and it is quite good to go back into the workplace, see people working hard and see that they have actually prepared for us to come.

Q128 Dame Anne McGuire: May I just finish on this? Does that mean that you are relaxed about the lack of individual assessment in terms of impact, because you see yourself as driving cultural change?

Nick Hardwick: Partly, but you need to look at a number of different things. For instance, the way we assess our impact is that we look at the outcomes of inspections and the degree to which they have implemented our recommendations, and we then publish all of that. We also look at the feedback we get. We get pretty positive feedback from people. You put those together and say, “Yes, that’s a reasonable picture,” but there is a real difficulty in saying, “It’s just down to us that this change happened,” because there is always a variety of people who have had an influence on it. If

you had a very crude measure, that might lead you in the wrong direction. You have to use some judgment in coming to views about impact; it is not an arithmetical exercise.

Mark Sedwill: At the risk of irritating the Committee by flattering you, part of the impact is the public scrutiny; it is the coupling of that with inspections. That is one thing that is perhaps slightly underplayed in the Report. The Report looks at inspections in their own terms but when you sit where I sit, it is the coupling of the reports with parliamentary scrutiny, media scrutiny and public scrutiny that enables one to drive the system. You know the realities of politics much better than I do, but that is a very powerful lever. I thought it was worth registering that point.

Q129 Chair: I want to ask two questions of Mark Sedwill and Dame Ursula. What comes out of this Report is the varying standards of implementation. If you look at who reviews and approves the implementation plan, how much sharing of good practice there is and so on, all those sorts of issue are not consistent across the five inspectorates. I really want you to address that. What we are after is learning from the best among the inspectors. It seems to me that it would be sensible if both Departments had a go at trying to build a more consistent approach and learning from what works best once the inspectors' reports are written.

Mark Sedwill: Yes, I would agree with that. We recognise the variety. The chief inspector of constabulary is looking at police forces and, in a sense, we are not part of the inspection regime—indeed, the Secretary of State as well as the public is being assured by those inspections—whereas with the chief inspector of immigration, we are the subject of the inspection. There are some differences but, fundamentally, you are absolutely right. We have tried in the past couple of years—I hope that John would endorse this—to ensure that the recommendations for which we are responsible within the Department are entrenched in a much more central way in the change programmes that we are overseeing.

Q130 Chair: And are they considered by your risk and audit committee?

Mark Sedwill: Exactly. They are looked at by internal audit. There is a full programme that goes to the audit and risk committee and, indeed, reports to my executive level.

Chair: Do you want to add to that, Dame Ursula?

Dame Ursula Brennan: Only to say that I think there is more to be done in terms of learning good practice across the inspectorates. The inspectorates do some of that themselves. The Departments do need to do more of that. One of the things that will come out of this is that we will do more of that. Something that I will be anxious not to lose is that the inspectorate of prisons has a particular role and a very distinct set of standards because of the fact that people's liberty is being taken away from them. I would not want us in any way to get to a consistency that somehow lost that. We will recognise that these inspectorates are doing different things.

On audit, we have a system for following up prison inspectorate recommendations. Getting the audit committee to look at them as they do with other recommendations—like those from the

National Audit Office, where we ask how many are outstanding and why—is a good move that we will now follow up.

Nick Hardwick: I agree with the point that looking at closed institutions is a bit different. The other point that I would not want the Committee to lose sight of is that, in fact, our key partners are Ofsted and CQC. Those are the people we work with most, rather than the criminal justice inspectorates. If you have too narrow a focus on just our criminal justice partners, who are important, you risk pulling us further away from the other people we need to work with. I urge that you do not have too narrow a focus on this because that might distort things.

Q131 Chair: That brings me neatly to my second point on inspectorates working together. I thought about the five there and about whether that is working well enough or whether we could make steps to improve. Take the issue of rape: the police are responsible for catching offenders, and they refer them to the CPS. We know from the statistics that although reporting a rape is up, there are fewer arrests and many fewer convictions. The prisons and probation service is responsible for rehabilitation and the prevention of reoffending. One in seven convicted rapists has a previous offence of a sex crime. It is an issue in immigration; of those trafficked to the UK, 41% were trafficked for the purpose of sexual exploitation. It is a classic issue that goes across all five inspectorates. How can you improve joint working there on an issue that is really important to improvement in the working of the agencies separately and together? I think that is for Mark and Dame Ursula.

Dame Ursula Brennan: In relation to the joint working across those kinds of criminal justice issues, there is the criminal justice joint inspection group.

Q132 Chair: But it doesn't do a lot, does it?

Dame Ursula Brennan: It has produced a lot of thematic reports, some of which have been really invaluable. There was one on multi-agency public protection agreements, which was important and has led to changes in the way we are doing that work. The critical thing, as Nick Hardwick said, is ensuring that we do not just say that we have a theme and everybody has to do their bit of it. Sometimes the truth is that across the CJS, things will land more obviously between police and prosecutors with rather less significant implications, say, for prisons. We have a regime where Ministers get together with the inspectors to talk about what we ought to be doing in terms of cross-cutting themes. Rape is an example of something that I am sure will be on the agenda when we have that next discussion.

Mark Sedwill: I have almost nothing to add. Just listening to you set out the question, Chair, I was thinking about how we are wrestling with the whole question of child sex abuse, which of course stretches well beyond the criminal justice system into public health, education, local government and so on. We are wrestling that at a policy level to try to make the system connect horizontally in a way that, frankly, it has not done effectively in the past. You are absolutely right that we are going to need the independent scrutiny of that now to help us identify the problems and, as we try to address those problems, we will need some kind of coherent independent scrutiny across the system. We need to give that some thought, so I echo your point.

Sir Thomas Winsor: I have just been appointed, probably as the last man standing, as the chairman of the criminal justice chief inspectors' group. It does a lot. Some 40% of the inspectorate of constabulary's work is joint inspection work. Yes, there is more that we could do to ensure that we learn from one another—that we share good practice and have joint training. We are doing that. We have common methodology and standard approaches to a number of things. We, as the chief inspectors, decided just before Christmas that we would establish a common web portal, accessible to all our staff, so that we can see what everyone is doing. We can ensure that it minimises the effect on police forces and other institutions so that we all know when their inspectors are going in. In so far as possible, we can achieve the greatest efficiency, economy and effectiveness in inspection, but also ensure that our staff benefit from learning from one another. There is more that we can do—that is adverted to in the National Audit Office Report. It is something we resolved to do before Christmas, and we will do it.

Q133 Mr Bacon: Meg Hillier's discussion about literacy reminded me of a dreadful constituency case. I read the judgment of an immigration tribunal chairman which contained 71 typographical errors—in some cases, so many so close together and so bad that you couldn't figure out what was being sought to be said. You couldn't interpret it. Indeed, the final page of the tribunal judgment was from a totally different case on a prior date, involving a different individual from a different country. My question, to which I suspect the answer is no, is: am I right in thinking that you do not inspect immigration tribunals, Mr Vine?

John Vine: That is correct.

Q134 Mr Bacon: Who does? Is it the Judicial Conduct Investigations Office?

Dame Ursula Brennan: If it was concerning the performance of an individual judge who was chairing a tribunal, yes, it would be.

Q135 Mr Bacon: If I wanted to raise the case of a particular judge, it should be with the Judicial Conduct Investigations Office?

Dame Ursula Brennan: Yes.

Q136 Mr Bacon: I was so shocked by the case. I do not know how representative it is, but if it is even remotely representative of the quality of first-tier tribunals on immigration, it is quite concerning. Have you come across other similar cases in the immigration tribunal space specifically?

Mark Sedwill: I have not heard of one as vivid as that, Mr Bacon, but I will take it away and identify it. It has not been brought to my attention, but it sounds as if it should have been.

Q137 Stephen Phillips: Mr Sedwill, don't forget about measuring the impact of these HM inspectorates, because if I am fortunate enough to be re-elected and returned—and, indeed, on this Committee—I will not forget about it.

Mark Sedwill: Mr Phillips, your tenacity is already—

Sir Amyas Morse: We should say a few words to the inspectors who are departing.

Chair: What I would say is thank you very much. It is so refreshing to have very open evidence.