



Justice Committee

Oral evidence: [The work of HM Chief Inspector of Prisons, HC 1101](#)

Wednesday 4 March 2015

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Members present: Sir Alan Beith (Chair); Mr Christopher Chope; Jeremy Corbyn; Nick de Bois; John Howell; Mr Elfyn Llwyd; Andy McDonald; John McDonnell

Questions 1–23

Witness: **Nick Hardwick**, HM Chief Inspector of Prisons, gave evidence.

Chair: Mr Hardwick, welcome back to the Committee. Like Mr Fuller, you have been in regular contact with us and there has been regular co-operation with us, which we very much appreciate. I ask Mr Corbyn to begin the questioning.

Q1 Jeremy Corbyn: Thank you very much for coming to meet us this morning. How did your work with NACRO help you in doing this job?

Nick Hardwick: My work with NACRO was with young offenders directly, so it gave me experience of the circumstances, attitudes and problems those young people faced. I went from NACRO to run Centrepoin, the charity for the homeless, where there are similar young people, so I spent the early part of my career working with young people who were either in trouble with the law or very close to being so. Apart from understanding their individual circumstances, one of the things you need to do as chief inspector is to be able to talk to prisoners and young people in custody, and I think it was important that I had experience of doing that before I came into the role.

Q2 Jeremy Corbyn: You worked on evidence-based issues before through NACRO, the Refugee Council and a lot of other areas. Did you feel that gave you a good basis to be chief inspector, because you had not come from the inside track but from groups that were, in a sense, advocates for individual cases or for general causes of change?

Nick Hardwick: It was certainly helpful to have that experience outside the system. I spent a lot of my career running relatively small organisations, working with people in crisis,

and under a kind of spotlight. I think that was good experience for coming into this job. It was also important that I had some experience of working with Government and politicians at relatively close proximity, just to understand how that kind of system worked. Both of those things were important to my role: the political—small “p”—experience and the experience of working directly with people in trouble and trying to help groups and advocate on their behalf.

Q3 John Howell: In your pre-appointment hearing you agreed with your predecessor that there was a delicate balance in achieving and maintaining independence. How difficult have you found that, and how have you dealt with any issues that have arisen?

Nick Hardwick: The independence of the role is crucial. In the end, I do not have regulatory powers; I just have the power of my voice, so it is crucial that people trust what you are saying not merely when you are saying something critical but when you are saying something positive, so that people do not assume that you are saying it because somehow you are in the pocket of the authorities that run the system. I think there are three elements. In terms of the day-to-day direct work, I have not had a problem. I have had unrestricted access. I can turn up any time I want, and, as you know, I do that unannounced. Once I and my team are in an establishment we can go where we want, see who we want and talk to who we want, and the reports are published entirely at my discretion. That has not been a problem at all.

At ministerial level, as is no secret, I have had some pretty robust discussions with the current Secretary of State, who every so often gives me the benefit of his views about my reports. That is fair enough. You need a thick skin and you have to deal with it.

There are two areas that are more problematic than the day-to-day work. Anne Owers spoke about this, and I was looking at what she said before I came here. One is about separating yourself from the bureaucracy of the Department and the threat that poses to your independence. If I go back to the battles I have had with the MOJ, I had a big one simply about getting an independent website. To start with, we were on the MOJ website. When people who do not know you very well are trying to work out what sort of body you are, they go to your website, and you are there on the Ministry of Justice website—you are part of the Ministry’s system. That was a big argument that I eventually won.

Like Mike, we had to get out of our offices and move somewhere cheaper, rightly so. The cheaper option put to me was an office in Petty France in a Ministry of Justice building. I had a big fight to resist that. Now we are in the tribunals building in Kingsway. That was difficult.

One of the concerns I have now is that, for understandable reasons, the Ministry of Justice is streamlining its processes and wants to take away our ability to manage our own affairs. Right now, the ability just to manage our own financial affairs within the budget we have, without having to get approval at the centre, is a problem. If I want to advertise a post, the person who needs to approve my advert, I have discovered, is the head of communications in the Ministry of Justice; the head of press in the Ministry of Justice has to approve what I say in an advert in terms of the staff I want to come to work for me. In the end, I have dealt with all of those difficulties, but it takes a lot of time and persistence, and you have to keep battling away.

But more important, the bigger issue, which maybe we will come to and which certainly undermines the perception of our independence, is that when you explain to people what you are doing, they ask, “Who gives you your money?” It is the Ministry of Justice. “Who appoints you?” It is the Secretary of State who is responsible for the bodies you appoint. As I have gone on in the job, I am more persuaded that those are real flaws in our structure.

Q4 John Howell: What would you say about the level of resourcing for the inspectorate?

Nick Hardwick: Like everybody else, we would like more. Looking at our resources is complicated because we have taken on extra work and had some extra money, but I think the fairest judge is our inspection hour costs, which have reduced by about 16%, from £81 to £67 an hour, if you average it out. We have got a lot more efficient.

As to where I would like more resources, but not much, I took the decision to prioritise my resources on getting inspectors out there on the ground inspecting, and what has suffered is our ability to do thematic reports. We have not done as many of those as I would have liked. The other thing I would like to do more of is something the NAO picked up; I feel now, as I come to the end of my term, that I and my team sit on a vast bulk of knowledge and expertise, and I do not think that is exploited to the full extent that it could be. I certainly do not have the mechanism to get it out there properly.

Q5 Jeremy Corbyn: Get it out to whom?

Nick Hardwick: Just promoting good practice to establishments that could learn from one another. At an operational level, to feed into new establishments, as they are developed, what they could learn from the way we do it. There are all sorts of ways. To give you a little example, NOMS was setting up a group to look at the use of peer supporters—peer workers; prisoners doing jobs for the prison. We know a lot about that. I just did not have anybody free to send to that group who could contribute some of our expertise.

You have to be careful about getting too drawn into the management and design of the system. I am not saying I would do a lot more, but, looking back, I do not think that the knowledge I and my team have has been exploited to the full extent it could be. I would like to have done more of that.

Q6 John Howell: How much time do you think the next chief inspector should spend inside prisons? You have spent as much time as you can inside prisons.

Nick Hardwick: I spend a lot of time, personally, in prisons. I keep a diary and I looked at it before I came out. So far, I have been to precisely 150 custody establishments in the time I have been doing it, and about 125 of those have been inspections. On average, I go to an inspection for a couple of days every fortnight. Like my predecessor, I walk around on my own; I talk to people and I try to get my own flavour of what is happening. I do not think you could do the job if you were not there, exposed to what is happening on the ground. It takes some time to get up to speed. I understand now some things that I did not understand when I started—not policy things, but how much the small domestic details of

prison life matter to prisoners. I now understand those things more fully. I think it is really important to spend time there. I also look at all the reports. I look at most of them in a lot of detail, but no report goes out without my say-so and corrections, normally.

Q7 Mr Chope: One of the big changes you have introduced is more random inspections without giving prior notice. What have been the effects of that?

Nick Hardwick: That is important. One of the things that is a credit to the Prison Service is that they have been very positive about that change. I have had no resistance to it. Normally, we ring them either from the car park or the hotel just before we leave, so we give people about half an hour's notice. You have to be cautious about it. You can see the physical state of the building. If they know you are coming of course they will clean up, so you see it as it really is. You can see the relations—the interactions—between staff and detainees before people have had time to prepare. We always send people in to look at the hot spots in a prison. They go straight away to the segregation unit, to health care and those kinds of things. I think it helps. Perception is also important. It is important that people do not feel that we are being hoodwinked, and we are not.

For all that, I would strike a note of caution. At the end of an inspection, I would never walk away completely confident that we had found everything we needed to do. I always have a sense of anxiety. Do we know what is going on? All the team say to me, "If only we'd spent longer, maybe we could find out more." For all that we do, you have to be cautious about ascribing too much. There is always a risk.

Q8 Mr Chope: If you had more resources, how would you deploy them?

Nick Hardwick: If I had more resources, I would not now put them into inspection particularly, although I might tweak that a bit. I would like to do more thematic work and more on identifying and promoting some of the good practice that we find. I would try to do more to encourage improvement than I am able to do at the moment.

Q9 Mr Chope: You are coming to the end of your term. Do you think it might be better in the future if we had longer terms, but non-renewable, thereby emphasising the independence of the inspectorate?

Nick Hardwick: Absolutely. You can do these jobs for too long. I have no complaints about the way I am treated. About seven years would be ideal. I think it should be a non-renewable appointment. As I said to the PAC, I think it is a real mistake to appoint my successor for a three-year term. It takes you 18 months to get up to speed; and inevitably a lot of candidates are likely to want to see it as a longer-term thing. They will want to be reappointed and they will be looking over their shoulder, saying, "Are the people that I am criticising and who are ringing me up to tell me how cross they are with what I am saying the same people I am going to have to ask for a job or renewal of my contract?" I do not think that is right. I think they have made a mistake.

Q10 Chair: In the case of your post, do you think that direct accountability to Parliament, and actual appointment by Parliament, as opposed to merely consideration of a named person by Parliament, is the answer?

Nick Hardwick: I do. I have come to that view more strongly as I have done the job. I am not sure about the exact mechanism, but I think that is the right way to go, not merely for the independence. Ironically, on some things somebody within the Ministry of Justice should be holding us to account, but no one is doing it, so it is not healthy. I do not think I have enough challenge about how I do the job and how I spend the money—the sort of accountability questions that you need to keep you on your toes. For understandable reasons, the Ministry of Justice backs off from doing some of that. I do not think that is healthy. If you had a relationship with something like this Committee, not only could you have a stronger relationship in terms of our reports, but I would welcome you saying, “What are you doing with the money you are being given? Was the move to an unannounced programme the right thing to do? Explain your reason for doing that.” If you do not have any accountability mechanisms, the risk is that you get sloppy. That might be an advantage of a closer link.

Q11 Jeremy Corbyn: What you are saying is very interesting. Would you go as far as to say that you would prefer the inspectorate to be completely independent of the Ministry of Justice, and that the appointment, accountability and reporting function would be to Parliament? Maybe you are going to write something about this when you finally leave the job. That would be in the public realm, which would be good. It would be very helpful.

Nick Hardwick: I have said this. I am unequivocal about it. I think it should report directly to Parliament, not to the Ministry of Justice. I am completely clear about that. I notice that is what the Public Administration Select Committee said. I gave evidence to them on that basis, and I think they agree with me. I do not think people need to be alarmed about that. We inspect immigration detention and police custody with HMIC. I am not sponsored by the Home Office. The relationship is different simply because of the scale, but I do not think that gets in the way. I would still see Ministry of Justice Ministers and I would still talk to officials, but I do not think they should be appointing me or my successor, and I do not think they should be setting my budget.

Q12 Andy McDonald: You said that the relationship between you and Parliament should be strengthened. You also said that about the relationship with this Committee in your pre-appointment interview. Do you think that has happened?

Nick Hardwick: I hope the Committee would agree that we have had a good relationship. I have certainly taken notice of what the Committee said, and in a sense I have deliberately pursued things that I know the Committee is interested in, like the Zahid Mubarek case, which you wrote to me about, and the restraint issues, which we have followed up—again, something I will be reporting on, hopefully before I go. I have done that, but I could see it being more regulated and formalised in some way. I would not want to get too far into the mechanics of how it should work, but I would welcome a closer relationship. There is one area where you could see that working. If, for instance, we produce a very critical report, we do not have enforcement powers, so do our reports help the Committee to hold officials or managers of services to account in a direct way? Does our scheduling work in

terms of your scheduling? If we do a report that is very critical, I would like to believe that you would then feel that it was a product you could use to say to a governor or the head of the Prison Service, “What have you got to say about this, and what are you going to do to fix things?” which may be more than happens at the moment.

Q13 Chair: I have seen some evidence of that in one of our forthcoming reports.

Nick Hardwick: I am sure. I have certainly valued the relationship and the times I have come here. I have always appreciated the way I have been treated, but I think that there are foundations that could be built on.

Q14 Andy McDonald: In terms of your own appraisal, it has been commented that it should be carried out by stakeholders rather than the MOJ. I do not know what your current thinking is. Is that still your view?

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

Q15 John McDonnell: In recent years you have spoken extensively, not least to this Committee, about the challenges facing the prison system. Could you summarise the position as you see it now? Also, what areas do you think your successor should concentrate on?

Nick Hardwick: Two things are happening that are outside the direct control of the Prison Service. One is a long-standing trend, which it is necessary to understand, where a higher concentration of men in particular are doing long sentences for serious offences; the offences for which people are there are more serious than was the case in the past, and the sentences they are getting for those offences are longer. You have a more challenging population than was the case in the past, and we should not underestimate the difficulty of managing it.

Secondly, I do not think people have yet fully appreciated a current threat, which is the surge in the supply of new psychoactive substances or legal highs. I do not like the term “legal highs”, but people understand it. Surge in supply is right. They do not have the capacity to deal with it properly at the moment, and it is having a hugely destabilising effect. The profits to be made from it are so big that there is involvement by organised crime; it leads to debt, bullying and violence, and in some places we think it threatens overall security in the prison. That is a relatively new thing, which is happening so fast that people have almost not caught up with it.

If you look at our findings on long-term issues, they have deteriorated over the last couple of years, particularly around safety. That is borne out by the Ministry of Justice's own data on assaults, suicides and self-harm. There is no doubt that the pressure the system has been under, particularly staff shortages, both actual staffing levels and the number of vacancies, has an effect. There is no doubt in my mind about that, particularly last year when there was a real squeeze on places and overcrowding. That had an effect. There is no doubt in my mind—it makes Ministers cross when I say it—that if you give establishments a very heavy policy agenda, regardless of the rights or wrongs of the individual policy, it is another pressure for people to manage in very difficult circumstances. I do not think there is any doubt that they have struggled to do that, and our judgments are borne out by the hard data, so there are real threats.

I would say to my successor that you need not to forget the basics—what I referred to before; what is happening day to day in life on the wings and the ordinary cat C trainer where most people spend their time. Do not take your eye off the ball. There are particular risks about what is happening to young offenders. There is now a more concentrated group of very troubled and challenging children in custody. As the numbers fall, there is a more difficult group to manage, and I am not sure that anybody has the strategies to deal with that properly. You need to keep a very close eye on what is happening on the women's estate too. There have been some improvements, but those are vulnerable. I would look at all those things.

In future, two other difficult things are happening. One is about the projected increases in the population and the extent to which resources are going to match that increased population and how it is going to work. That is a threat. There is a danger, which maybe we will come to, about fragmentation in delivery—whether the governor is now in proper control of their prison, because health care is delivered by the NHS; learning and skills are delivered by Manchester college; resettlement is delivered by some CRC; and the drug service is delivered by somebody else. You have to be a very effective governor to maintain control over all those things, and some of them struggle.

Q16 Chair: In the course of the work that you do, you must have become aware that there is sometimes a danger of a demoralising negativity in the prison system.

Nick Hardwick: Yes.

Q17 Chair: There are always problems; there are always things to which you rightly draw attention and there are always pressures. Have you seen it as part of your role to affirm good practice?

Nick Hardwick: I do. I always try to say something encouraging. We have a fairly informal debriefing system. I try to say encouraging things to them when I go, regardless of where it is, and even in a bad place there is always good work done. The media always pick on the bad stories, not the good ones, but I am quite encouraged by the feedback we get from prison staff and managers themselves. I am surprised by how positive that is. You think, "I've given them a really hard time about this," and they say, "Yes, you're right to say that, and that's helpful." No one jumps for joy when the inspectors turn up, but I think generally they see us as helping to maintain standards, and that we are an important safeguard. We try to make a point of acknowledging good practice when we see it, but you

make an important point. Prison staff and managers have a really tough job. I am always cautious about claiming credit for what the inspectorate does. Has what we have done led to improvement? The people who create improvement are the staff and managers on the ground. We may help them, but it is the people on the ground who do it. Just as bad things can happen in prisons, because it is behind closed walls and no one knows what is going on, so good things happen there too; people are doing exemplary work sometimes and that does not get the notice and recognition it should. That is a message I try to give people when I deal with them and interact with them.

Q18 Mr Llwyd: In your pre-appointment hearing you said you were not in favour of merging the criminal justice inspectorates. Have you any different thoughts now?

Nick Hardwick: No. I am more strongly of that view. I am sure that will come back on the agenda after the election, so I am glad to have the opportunity to make my view clear. The authorities have to make up their minds about what you want the prisons inspectorate to do. Is it essentially about the efficiency of the system, in terms of both how cases are handled and saving money, in which case a merger might make sense; or is it about recognising the risks anybody in custody faces, particularly vulnerable people, and trying to have a system that prevents poor treatment and ill treatment? I am now absolutely persuaded—more than when I started—about the need for regular independent preventative inspection. It does not solve everything, but things would be a lot worse if it was not happening. If you were to merge us with another inspectorate that was more focused on efficiency, which might be the right thing for them to be doing, you would take away that preventative focus. I said in answer to your earlier questions that the chief inspectors themselves regularly go to prisons and use the authority of their office to try to drive improvement and set standards. If I was simply the manager of a large bureaucracy sitting in my office, getting out every so often for a guided tour of a prison, that would not work as well. I feel very strongly about this. People should make up their minds. If you think there is a risk of people being treated badly in custody, as we have seen recently, however imperfect it may be, the best safeguard we have yet come up with is regular independent inspection, and it needs to keep that focus.

Q19 Mr Llwyd: May I take you back briefly to something you said in answer to Mr McDonnell a few minutes ago? You told us about the dangers, effectively, of fragmentation. As you well know, many prison services are now delivered by a variety of different organisations that may be under the scrutiny of a variety of different inspectorates. How is your office having to adapt to this? Is there a need to refocus where you aim your recommendations?

Nick Hardwick: We have done a lot of work on this over a long time. My predecessor started it, so I have a pretty good base. If we go into a prison, our inspection team now will be my inspectors, but there will be inspectors there from the CQC, from the probation inspectorate, from Ofsted and from the General Pharmaceutical Council—working as one team. As a product, everybody signs up to the overall report, and if some of the other inspectorates need to do their own individual bits to meet their statutory obligations, they do that too, but one consistent picture comes out. That works pretty well.

To go back to the point about mergers with other inspectorates, the main partners with whom we do most work—I have a very good relationship with Mike Fuller, but he is not my main partner—are Ofsted and the CQC. They are the ones I work with most closely. That works quite well.

As to what we do with our recommendations, I have taken the very deliberate decision, for us, that we direct them, if there are local recommendations, to the governor. We want the governor to have the authority to be able to say to a poorly performing health provider or college, “You’ve got to get your act together, and I’m going to be accountable for making sure that you do.”

Another important thing is that we have a new responsibility to inspect court cells. You would be surprised how awful they are. I have a report coming out on that.

Q20 Mr Llwyd: No, I wouldn’t.

Nick Hardwick: Well, I was surprised. I thought, “What can go wrong in a court cell?” Some of them are disgusting. I remember going to one court cell. The place was in poor repair; it was dirty. Damage had been done to the fittings and there was an obvious ligature point. I said to the assembled managers from HM Courts Service, from whoever was the firm that provided the detention officers and from the provider responsible for the building and the people responsible for maintenance, all of whom were commissioned under different arrangements, “If a detainee hanged themselves on that ligature point as a result of faulty maintenance, who of you would be responsible?” The answer from all of them was, “Not me.” No one. We are still battling to find someone to take overall responsibility for what is happening in court cells and who we should direct our responses to. It is a real problem and I hope this Committee will come to it. It is a real shocker. For prisons, we say that the governor has to be in charge of his or her prison. It may be that they need to get health care or education improved, but you, governor, are going to need to sort that out; this is who we are directing it to.

Q21 Chair: We find it very interesting that you should have made the decision actively to seek to strengthen the governor’s ability to deal with that variety of organisation.

Nick Hardwick: We were at an event with NOMS a while ago and we talked about that precise point. We were talking about recommendations aimed at health care. They said the governor was not responsible for health care. We said we thought the governor should be ultimately responsible. A very senior NOMS manager said to us that they saw the governor of a prison more as the conductor of an orchestra than as the manager of a service. I absolutely do not agree with that.

Q22 Chair: That is very interesting. One thing that you do not think is part of your responsibility and have said so, if I am not mistaken, is how many people we are sending to prison, and whether we are sending the right people to prison. Do you still think that is an area that in your role as inspector you should stay away from?

Nick Hardwick: I think I should stay away from that particular question. I have not dealt with who is in prison and how many, but if you have more people in prison than you have resources to cope with I certainly feel that is something I can talk about, and will. I will not say how many people you should have in prison, but I will say how I think you should deal with them. There is a real problem if the numbers keep rising. There is almost a political correctness about it. We are not allowed to talk about prison numbers because that makes us feel we are weak on crime. You have to have a debate about it. Do you want more prison spaces, hospital spaces, school spaces? There are choices to be made, as there are with every other area of public expenditure. I am not going to say what I think that choice should be, but there is a limit to how far you can reduce the unit cost. I do not think we should just allow the prison population to rise without a proper public debate about where that fits into the nation's priorities at a time of austerity, as though that is a topic barred from discussion. I think it should be discussed.

Q23 Chair: Thank you very much indeed, Mr Hardwick. We thank you for the work you have done and for your constant co-operation with this Committee. Our best wishes to you.

Nick Hardwick: Thank you to the Committee.