

Justice Committee

Oral evidence: HM Inspectorate of Prisons’ relationship with the Ministry of Justice, HC 724

Wednesday 20 January 2016

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Members present: Robert Neill (Chair); Alex Chalk, Alberto Costa, Philip Davies, David Hanson, John Howell, Dr Rupa Huq, Victoria Prentis, and Marie Rimmer.

Questions 1–134

Witnesses: **Nick Hardwick**, outgoing HM Chief Inspector of Prisons, and **Peter Clarke**, incoming HM Chief Inspector of Prisons, gave evidence.

Q1 Chair: Welcome to today’s evidence session. We are very grateful to Mr Hardwick and Mr Clarke for coming to give evidence. First of all, do any members have interests that they wish to declare? I am a non-practising barrister and a former member of the Metropolitan Police Authority, as some of you may know, but a long time ago.

Alex Chalk: I refer the Committee to my declaration already in the Register of Members’ Interests as a barrister.

Q2 Chair: Thank you very much. For those who are watching, Mr Hardwick, you are about to finish your tenure as chief inspector of prisons and, Mr Clarke, you have been appointed in Mr Hardwick’s place. You kindly came before the Committee not too long ago, before the appointment was confirmed. I think we are right in saying that you are in the handover period and that from the end of this month Mr Hardwick will be leaving and you will be running the thing entirely on your own.

Peter Clarke: That is exactly right, Chair. We are now 48 hours into the handover period.

Q3 Chair: We will probably ask a little more about that. The purpose of today’s hearing relates in particular to an exchange of correspondence, Mr Hardwick, between yourself and the permanent secretary at the Ministry of Justice in relation to budgeting, but also perhaps to some other issues. Just so that everybody knows, the Committee have agreed to publish that correspondence. It was copied to us and it is on the Committee’s website. It is important that we say that so that we can ask openly about it. If anybody is watching and wants to look it up, they can. Having said that about the preliminary matters, I thank you for your time and for coming in at fairly short notice.

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Mr Hardwick, I want to start from the perspective of those two letters. Your letter of 1 December is the first one we are interested in. My understanding is that the vast bulk of your budget comes from MOJ.

Nick Hardwick: Correct; 80%.

Q4 Chair: The other bits are things like the Channel Islands, Isle of Man and the other bodies.

Nick Hardwick: A decent sized chunk is from the Home Office.

Q5 Chair: Yes, because of immigration detentions and so on.

Nick Hardwick: Yes.

Q6 Chair: Out of interest, the particular area that you raised concerns about was fee-paid staff in your budget of £4.8 million-odd, I think.

Nick Hardwick: Yes.

Q7 Chair: How much does the particular item that you raised with Mr Heaton account for?

Nick Hardwick: I am afraid I do not have the exact figure at the moment. It changes from time to time. We have a general staff budget and then within our budget we deploy associates as and when we think we need them for particular roles. I do not have that exact breakdown of costs; I can easily get it for you if you would like it.

Q8 Chair: That might be helpful. We will come back to its overall role in the scheme of things in due course. I want to start with this. You wrote to the permanent secretary about what, on the face of it, appears to be a matter of financial management, but you chose to copy in this Committee. That is courteous of you, but why?

Nick Hardwick: Because I thought it was not just a question of financial management. I thought it was also a question of the independence of the inspectorate, and I knew that was something that the Committee had previously expressed interest in. As I think I tried to make clear in my correspondence with the permanent secretary, I fully accept that we have to be accountable for our money and I fully accept that if there are savings to be made we are going to have to take our share of those, but when the Department whose services we are inspecting starts to say precisely how I should carry out those inspections, I think it is an issue about our independence. That was my main concern. That is why I felt it went beyond the normal financial negotiations you might have, and raised issues of principle. I was also concerned that I was not making progress through the normal means to resolve it, so potentially I was going to get to a point where it would be very disruptive for the programme of the inspectorate and I needed to try to get the matter resolved urgently and was not sure I would be able to do that.

Q9 Chair: Perhaps we will come back to the programme itself in a moment. As I understand it—I have seen Mr Heaton's reply as well—it is suggested that spending controls on arm's length bodies were introduced in October. Is that what had happened with the particular issue that you raised?

Nick Hardwick: Yes. It developed over a period of time. We were submitting items that we thought should be exempt. Our particular concern was with our associate costs. We were saying, “These are not add-ons; these are critical to us and critical to the way we carry out our inspections.” To start with, I was not that concerned. I thought it was just a misunderstanding and that, if I explained and provided more information, light would appear and we would resolve the matter. But we were getting closer and closer to the point where, in a sense, the approval to spend that money would run out. I was told at one point, “Look, you’ve got approval to use associates but for this week only.” I was having to say to our associates, “Look, we are not sure we are going to be able to use you in the way we had planned.” I thought it was fair to tell them that because they might have other offers of employment they were turning down. At a practical level, did I have the resources I needed to run the inspection programme we had planned? That was starting to get critical, and there were broader issues. As I say, I thought it was for me to say which experts I needed on a particular inspection, not the body whose services I was inspecting.

Q10 Chair: Had you ever come across the suggestion of weekly approvals for lines of expenditure before during your time as chief inspector?

Nick Hardwick: No. To be clear, if they had come to me and said, “Look, we have our in-year cash schedule and we are going to need to make some savings,” that is something I had anticipated they were going to do. I had already begun to make plans to hold back some expenditure for precisely that eventuality. I was not resistant to the idea of savings needing to be made; I was just resistant to them telling me precisely how I had to do it.

Q11 Chair: Are there any other heads of expenditure where the same approach has been adopted?

Nick Hardwick: There were other areas, for instance, training and some other items. I did not make a fuss about that, because if they had asked me those might have been things I would have held back anyhow. I could not hold back, without completely disrupting the programme, expenditure on associate staff.

Q12 Chair: That is because of your programme of inspections, as I understand it.

Nick Hardwick: Yes. We have a programme of inspections. I will explain the sorts of posts we are talking about. First of all, they are often staff with operational experience that is particularly important for us when we look at security and safety issues. Practically all our medically qualified healthcare inspectors are associates. We cannot replace them with somebody else. All our editors—the people who actually edit and quality-control the reports—are associates. They are cheaper per hour than our ordinary inspectors and, frankly, they have writing skills that our inspectors with operational backgrounds often do not have. If suddenly I could not use my editors, I would have to stop the inspection programme and take inspectors off inspecting to finish the reports. They would not have been as good at it and they would be more expensive per hour than the editors I was not being allowed to use.

Q13 Chair: Have your discussions been with the director general responsible for this?

Nick Hardwick: I didn't have discussions. We submitted bids. We submitted applications. As it came closer I said, "I think it would be sensible to talk about this." It was not until the final stage that it was possible for them to talk to me about it face to face.

Q14 Chair: Then you had the conversation directly.

Nick Hardwick: Eventually the matter was resolved in a conversation.

Q15 Chair: Mr Heaton said in his reply that you have agreement to the end of the financial year and that you do not now need to get weekly approval.

Nick Hardwick: After my conversation with Indra Morris, my understanding was that I would continue to need to get weekly agreement. My note and recollection of the conversation is that she said, "Look, you need to tell us, 'This is none of your business'." It was as a result of that that I then wrote the letter saying, "This is none of your business."

Q16 Chair: "You need to tell us, the MOJ, 'It is none of your business how I run the inspection programme'."

Nick Hardwick: Yes, that is what I understood her to be saying, but almost within hours of that, or pretty simultaneously, we got word from other officials that the expenditure was agreed, not just on a weekly basis but going forward. At the point I wrote the letter, I was unclear about what the position was following my conversation with Indra Morris.

Q17 Chair: What is your view about the response you then got from the permanent secretary?

Nick Hardwick: The immediate critical issue about whether I could carry on the inspection programme was resolved, but the broader and, in a sense, more important issue of principle is how we manage the relationship, so that we can be accountable for the money that we spend, which I think is important, but they are not trying to tell us how we inspect them, which is what we are doing. The letter self-evidently did not address the issue of principle. That is something that still needs to be resolved, and it could be resolved. It has always been my view, pretty much since I started, that it is not appropriate for us to be sponsored by the Ministry of Justice. I accept that I have lost that argument. It has been considered and it has not been successful. As I say, as long as we continue to be sponsored by the Ministry of Justice we need a clear protocol that sets out how that relationship will work and which properly respects where we should be independent but also deals with accountability. Obviously that is something for Peter and the Ministry to take forward. It is really important that proper weight is given to how we manage to exercise our functions independently as part of that process.

Q18 Chair: And that is not addressed in the reply.

Nick Hardwick: No, self-evidently it is not addressed in the reply, and that is the most important issue. In preparation for this hearing I looked back at what I said when I was first appointed in my evidence to the then Justice Committee. The independence point is not simply a matter of the big rows, a bit like this was. It is also that you try to be helpful. It is about capture; you become indistinguishable from the body that you are supposed to

be inspecting. It is important that there is a proper distinction. If it is necessary to make life uncomfortable for the Department, the inspectorate should feel able to do that.

Q19 Alex Chalk: You have very fairly set out that, as far as you are concerned, ideally the Ministry of Justice would not be the sponsor, but they are. In those circumstances, what measures do you say could be put in place to properly respect that independence, or are you saying that it cannot be done with them as the sponsor?

Nick Hardwick: Don't let the best be the enemy of the good. I certainly think you could improve the situation from how it is now. Frankly, my experience has been that up to now it has worked in a very British constitutional sort of way. Nothing has been written down about it very clearly, but by and large it has worked and people have understood it. Then personnel within the MOJ move, they forget what the relationship should be and you have to re-educate them. It would be possible to have a protocol that sets some of these things out more clearly—

Q20 Alex Chalk: Sorry to interrupt, but can you assist the Committee with just one or maybe two points that you think should be the pillars of that protocol?

Nick Hardwick: It should be very clear and written out, for instance, that the basic principle is that our reports and findings, and the criteria that we use for our inspections, are down to the chief inspector to decide, not the Ministry. You might want to consult, and you should consult, the Ministry and the Secretary of State, and you would want to take proper notice of what he says, but they should be for you to decide. On this particular issue, within the budget that is set, you should have to account for how you spend it but I should be able to choose the staff and skills I need to carry out the functions of the inspectorate. It should be clear that that is my choice and not their choice. I could go through some other things.

Alex Chalk: That is very helpful. Thank you.

Q21 Mr Hanson: You said in your letter of December, Mr Hardwick, “I have sought unsuccessfully to establish protocols.” What was the blockage?

Nick Hardwick: When I came into the role my predecessor had negotiated a draft agreement. I tried to get that signed off. It then became difficult because lots of the functions within the MOJ changed as a result of the expenditure over that time period so we could not do that. Frankly, it then became clear that they did not want to do it.

Q22 Mr Hanson: When you say “they”, is that civil servants or Ministers?

Nick Hardwick: I was not clear whether it was officials or Ministers, but my sense was that Ministers at the time did not want it to happen. Out of protest I said that every month I would email them saying, “We need to resolve and progress this,” and I did not get a response.

Q23 Mr Hanson: Are we at the stage now that we have a potential draft protocol under consideration? Is that your understanding?

Nick Hardwick: No. At least, if there is a draft I have not seen it.

Q24 Mr Hanson: Have you seen it, Mr Clarke?

Peter Clarke: No, I have not.

Q25 Mr Hanson: Would you welcome a draft protocol?

Peter Clarke: I would certainly welcome a draft protocol. Clearly, from what you have heard, I have an immediate issue, which is that Mr Heaton's letter gives some comfort about the funding of associates and their authorisation until the end of the financial year. I need to have an early conversation to get some clarity that it will continue into the next financial year, otherwise I will find myself in exactly the same position as Nick was in before Christmas.

Q26 Mr Hanson: Following Mr Chalk's comment, could either or both of you give me a clear indication of what you believe a protocol should have as its central objectives?

Nick Hardwick: My view is that it should safeguard the independence of the inspection function and should reflect the international agreements—for example, OPCAT—that the UK has entered into. It is about being within the budget that has been allocated to me and within the ordinary rules that would apply to public expenditure. Control over how you use that budget and the staffing you need should be down to the chief inspector. That is a critical thing. It also needs to be clear that the publication of reports should be a matter for the chief inspector. Those two critical issues need to be clear.

Peter Clarke: The last point about the content and publication of reports being entirely at the discretion of the chief inspector is a hugely important one. We have seen in other inspecting bodies in government some real difficulties in the last year or so where the discretion of an inspector to publish reports has been challenged by the sponsoring Department.

Q27 Mr Hanson: Mr Hardwick, you have mentioned OPCAT and article 18. Are you aware of other European inspectorates that have a protocol of the type you have suggested?

Nick Hardwick: I am not aware of any other European inspectorate that is sponsored by the Department whose bodies they inspect, so the situation does not arise in the same way. Obviously the systems of government are different. Most of those bodies are in some way directly accountable to Parliament or they are accountable to something that would be equivalent, I suppose, to the Cabinet Office. None of our comparable bodies that I am aware of is accountable to a body that runs their detention systems, and they are surprised when I tell them we are.

Q28 Mr Hanson: Mr Clarke, would you therefore inform the Committee that it is your wish to ensure that by a set period of time, whatever that might be, a draft protocol between the inspectorate you are inheriting and the Ministry of Justice would be recommended by you to be in place by a date to be determined?

Peter Clarke: There are a couple of points we have to bear in mind. One is that a Cabinet Office review of arm's length bodies is in the process of being carried out, so I would not want to pre-empt that. I entirely agree with the principle that a protocol would be most useful, but this is not a unique situation. In the last eight years I have sat on the boards of two arm's length bodies, and indeed on their audit committees. Both those bodies—the Serious Organised Crime Agency and the Charity Commission—have fundamentally independent roles. Yes, there have been financial controls but there has never, in my

memory, been anything that is so detailed in terms of financial control as to impinge on the operational independence of those bodies. That is clearly the issue that Nick set out in his letter. It tipped over from being an issue about budget control and proper financial controls into something that impinges on operational independence. That would be my starting point in this whole conversation.

Q29 Mr Hanson: Mr Hardwick, you indicated that you have not seen a draft protocol, if there is one; that you would recommend that there should be one; and that in the light of the question I put to Mr Clarke, had you been in post you would wish to see a definitive protocol—

Nick Hardwick: My hope is that what comes out of this process, and why I raised it, is that actually those things should be set out clearly in some kind of agreed public document so that everybody understands the basis under which we operate and relate to the MOJ, so that the next time there is a change of personnel there and they start to do something that is outside that we can say, “These are the rules under which we operate.” It is quite straightforward. It does not seem terribly difficult to achieve, but I have not been able to achieve it so far. As I say, there is a real problem. Most of the time you get by on personal relations, but when there is a critical crunch issue and negotiations get hard, you need clear rules of engagement.

Q30 Alex Chalk: You are making the point very powerfully but I want to test it a little bit. Suppose for the sake of argument that a future inspector takes leave of their senses and starts appointing as temporary staff, and spending hundreds of thousands of pounds of public money on, people who are manifestly inappropriate. Who then pulls the plug and says, “No more”?

Nick Hardwick: Indeed. I recognise the problem. What you have to put into your protocol are some proper accountability mechanisms. For instance, I certainly accept that you have to have an audit function and you have to operate within the general rules that apply and that the Cabinet Office sets down about public expenditure. You certainly have to stick within your budget; I am quite clear about that. I have never objected to the MOJ saying that to me. We have that agreement: “I do not think you should personally appraise me, but I certainly think I ought to be telling you”—which I do—“what I have done with the money you have given me.” You need that kind of financial accountability. You need a mechanism, particularly where someone has a brainstorm and does something crazy, whereby you can stop them. I understand that.

Q31 Alex Chalk: Supposing, for example, you instruct a whole load of people where there was a personal financial interest or something that was plainly inappropriate, there has to be an emergency brake, doesn’t there?

Nick Hardwick: One of the suggestions I put forward was that the inspectorate should have an advisory board, and one of the advisory board’s functions should be to act as an audit and risk committee with a dotted-line relationship to MOJ financing. You have then built into the system an ability to say, “Look, we are really uncomfortable about the propriety of this.” That creates another set of problems that have to be worked out, but it would be one option for dealing with it. That is in the proposal for the advisory board that I put forward to the MOJ. If in due course there was a Cabinet Office review, you might want to put some of these things into statute or into a more formal arrangement, but that

would be a way of doing it. You would have an audit function that had its own dotted-line relationship to the MOJ.

Q32 Chair: Mr Clarke, you expressed some concern about the difficulty from your perspective.

Peter Clarke: Yes, considerable concern. Clearly the very essence of the role is independence, and the way in which it is carried out and the skills that are needed in particular inspections and in particular institutions must sit in the first instance with the judgment of the chief inspector and the team. It would be quite wrong and completely impractical to go for some sort of weekly authorisation of that sort of work. It flies in the face of any recognised good practice in business planning, forward planning, budgeting and so on. I entirely agree that there needs to be some sort of sensible balance. Mr Chalk obviously makes a very powerful point about guarding against capriciousness on the part of a chief inspector, but I hope that we can look for some sensible checks and balances, including of course the NAO's role in this sort of area.

Q33 Chair: It almost smacks of micromanagement, some might say. Is that a fair characterisation?

Nick Hardwick: We have a big staff meeting every two months, and I was at the point where I was saying to the staff on Wednesday, "I am not quite sure whether we are going to be able to run the programme this coming Monday," because I did not have authority to deploy the staff I needed. It is crazy. It was a mistake; that is the point. I do not think anyone was deliberately saying, "That is what we want the result to be." I just could not make them understand that it was the result.

Q34 Victoria Prentis: You have told us about this fundamental misunderstanding with the MOJ. Was it something that got worse over time? Clearly there was a crunch point.

Nick Hardwick: It went up and down a bit. You would think you'd got it sorted out and then people would change and you would have to sort it out all over again. That was a pretty regular pattern. To be fair to the Ministry, the crunch point in this case was their need quickly to make some overall savings. I have sympathy with that; I understand they had to do that, but what they took was a blanket approach that, as in some other things, works for a big central bureaucracy where everybody pretty much does their job sitting in one office. It did not work for us where we have a much more fluid workforce, who are much more mobile. I could not make it work at a practical level. The crunch point was the budget squeeze that they were under, the pressures they were under and the need for them to act quickly in accordance with what Ministers wanted. What was ironic was that I had seen some of that coming and had already applied the brakes to our general spending. If they had come to me and said, "We have to find some savings. How can we do that?", I could have offered them something. I understood their problem. I just could not solve it in the way they wanted me to solve it.

Q35 Victoria Prentis: Turning to Mr Clarke—because we know your views about appraisals, Mr Hardwick—in your pre-appointment hearing you said that you would consider internal and external forms of appraisal, possibly together. Is that something you have thought about and could you tell us a bit more?

Peter Clarke: I have thought about it to an extent. Since the pre-appointment hearing I have received my letter of appointment, which says very clearly that on appointment there will be a discussion between the MOJ and me about the form of appraisal. That is then linked to probably the next paragraph, which says that, if the question of reappointment ever arises, then clearly the issue of appraisal will be taken into account. There are two limbs. One is appraisal of the person and the other is appraisal of the performance of the inspectorate. That is the conversation I am going to have with the MOJ. Clearly one has to acknowledge the current legal and constitutional position in respect of the relationship with the Secretary of State, but at the same time I have taken note of the remarks that were made by your predecessor Committee when Nick was appointed in 2010. The Committee said very clearly that something beyond a mere managerial approach is required and that there should be some peer review or stakeholder engagement. Part of the conversation will be what sort of form that could take.

Q36 Victoria Prentis: Following on from that—possibly this is a question for you both—do you see a role for the Committee at all in that appraisal process?

Peter Clarke: Would that be appraising the person or the inspectorate?

Q37 Victoria Prentis: The inspectorate, I imagine.

Peter Clarke: Clearly the Committee will have views and will make reports as it sees fit. There may be a conversation to be had about whether it would be part of a regular appraisal process, which of course plays into employment issues. I am not quite sure what the implication would be.

Q38 Victoria Prentis: What do you think, Mr Hardwick?

Nick Hardwick: I certainly think there would be a role for the Committee in the workings of the inspectorate. It would be a healthy thing. The Committee represents a range of interests. I would have found it quite helpful to say, “This is my plan for this year. This is why I have chosen to do this. This is what I think the priorities are,” and to have some challenge and discussion about that. You would have a point where you were setting out your arguments and priorities and why you were doing things in a particular way. Often the way we work is not well understood, so a greater level of understanding among parliamentarians, rather than simply with officials when that exists, would be a healthy thing. Whether there would be formal appraisal is a different issue. For instance, when we produce our annual report I hope you would be interested in what we have to say about the Prison Service and the places we inspect, but you might also want to ask about how we carried out our functions over the last year. That would be a reasonable thing to do. I do not want to make life difficult for Peter. It is an isolated job. You want a bit of feedback that is not partisan, in a sense, and comes from a different angle. I personally would have welcomed it.

Chair: That is very interesting, although I do not know whether Mr Clarke is grateful to you.

Peter Clarke: My mind is open, Chair.

Chair: That’s fair enough. You have heard the advice of your predecessor.

Q39 John Howell: Mr Hardwick, presumably you would reject any suggestion that Ministers have exercised influence over the content of your policy.

Nick Hardwick: I would reject that they have been successful in doing that.

Q40 John Howell: Isn't that the most important indicator of your independence?

Nick Hardwick: It is the most important indicator. When Mr Grayling was Secretary of State we had some pretty robust discussions about the content of what I was saying. I think it would be helpful to make sure that those things are clearly understood.

Q41 John Howell: Where I am going on this is to get you to give your opinion afresh on whether the governance and accountability of the inspectorate need to be looked at.

Nick Hardwick: To be clear, I have generally been able to publish my reports and say what I want to say without let or hindrance. Any time there has been a query I have been able to deal with it. I do not think that is the major problem. The major problem is, in a sense, the controls over how I get to my conclusions. Once I have reached a view on a topic, no one has challenged the process, but in order to reach a view I need to be able to apply resources and particular techniques to get there. They are sometimes intrusive and sometimes people might think I am heavy-handed. That is where the independence issue comes up.

Q42 Chair: If you control the budget, you often control the process, don't you?

Nick Hardwick: You do; exactly. That was the point. If you were uncomfortable about me looking at a particular area, you would prevent me having the spending to do it. To be clear, I recognise, and always have, that when I inspect somewhere it is a very intrusive and disruptive process. It is, and I always start off by saying that. If we inspect somewhere it is disruptive for them, but there has to be a degree of rigour if you are going to try to find out what is going on below the surface. Sometimes I get feedback that the process is over the top, but they ought to be able to talk to me about that. "Aren't you being too heavy-handed?" for instance. I accept that is a conversation to have, but in the end it has to be the chief inspector's decision.

Q43 Alberto Costa: On the issue of the potential for exercising ministerial influence, during your time as chief inspector did you ever receive a telephone call directly from a Secretary of State on any issue in respect of the work you did?

Nick Hardwick: Yes.

Q44 Alberto Costa: Would you have regarded that as beneficial to the work you did, or did you find it a hindrance?

Nick Hardwick: I did not have any objection to the Secretary of State—this is Mr Grayling—telling me on occasions pretty robustly what he thought. To be fair to him, he did not have much objection to my telling him what I thought either, so we had some pretty robust conversations sometimes. He certainly had a view about the conclusions I was reaching. If someone says, "Look, I think you have got this wrong," I would consider very carefully whether I had got it wrong. I would not ignore it; I would take into account what people were saying, but in the end I would say where I thought the evidence took me.

Q45 Alberto Costa: Would it be fair to say that, if you received a call from a Secretary of State on an issue concerning your work, it was more than likely to try to influence what you were doing?

Nick Hardwick: Yes.

Q46 Alberto Costa: What guidance would you offer your successor if he were to receive a telephone call from a Secretary of State?

Nick Hardwick: I do not think it is an unhealthy thing for the Secretary of State to ring you up and say, “Look, what are you doing?” I have had conversations with all the Secretaries of State I have worked with. I go in and see them on a regular basis to say, “This is what we are finding”, and they say, “Are you sure?”, or, “Have you considered this?” Quite often they have different information from mine, so I say, “This is why I have come to this conclusion.” I would say that dialogue is perfectly appropriate, but my view is that in the end you look carefully at your evidence, you check and you double-check, and, if your evidence leads you to a conclusion, that is what you should report. The Secretary of State is elected and I am not. If the Secretary of State asks me to look at something, as happens sometimes perfectly legitimately, particularly with the last Secretary of State, who asked me to look at abuses of the ROTL system, I say “Yes, I can see that is a priority for you and it is important, so I will go away and do that.” He asked me to look at the business where MPs’ correspondence with prisoners had been opened. That would not have been in my normal programme of work, but he asked me to do it and I was happy to try to oblige. I would not want a conflictual arrangement. I would expect to have a dialogue with Ministers, but in the end the conclusions have to be ours.

Q47 Chair: That leads us back to the point that Mr Clarke raised, which I suspect you might share, that perhaps the danger going forward is that you reach your conclusion independently, despite whatever conversation was had, but if it is awkward the Department sits on it.

Nick Hardwick: It is an established principle that the chief inspector decides the publication date, but that is not written down anywhere. There is nothing that says that. In fact it is probably the staff in my office who decide publication dates and we just publish when they are ready. That is our process. We do not take any notice of what is happening externally; once a report is ready we publish it. That is how we operate.

Q48 Chair: In fairness, has that ever been a problem to you?

Nick Hardwick: No, but there is nothing written down that says that is the case.

Q49 Chair: If you had a protocol on other things, that should be put in.

Peter Clarke: Yes; I was referring rather opaquely of course to the difficulties that the former chief inspector of immigration faced.

Q50 Chair: A different Department.

Peter Clarke: A different Department and a different context, but the principle is very similar.

Q51 Chair: Theoretically, the system is broadly the same. What has worked in the MOJ could create difficulties elsewhere.

Peter Clarke: Yes.

Q52 Mr Hanson: Following up on the point you mentioned, and for clarity, what is the current practice in the inspectorate in relation to producing a draft report and the period between you producing a conclusion and publication? At that stage has any ministerial influence ever been exercised over the outcome of a report you intended to publish and which subsequently has been published?

Nick Hardwick: No. The process I follow is that I have a draft report that I sign off. We then give the inspected establishment an opportunity to come back with any criticisms or factual inaccuracy. I see all of those for every single report. I approve the responses and any changes and then I decide when to publish. The only occasion on which a Minister has discussed the content of a report with me prior to publication was when the previous Secretary of State discussed the contents of my annual report with me and what he felt were the key issues.

Q53 Mr Hanson: I was simply trying to establish, when you mentioned that you had had robust discussions with Ministers, whether that was at post-publication, pre-publication or pre-draft report stage.

Nick Hardwick: The telephone conversations were post-publication and were about more general responses. I had a discussion with the previous Secretary of State about my annual report prior to its publication.

Q54 Chair: Which year was that?

Nick Hardwick: This was the most recent annual report, which was 2014-15, the report we published in June or July last year.

Q55 Mr Hanson: If the arguments are post-publication, that is an argument that you are doing your job. If the tensions are pre-publication, it might be different.

Nick Hardwick: Precisely. The point I was trying to make is that I would be more worried if the Secretary of State was never having a conversation with me about what I was saying than if he was. The annual report one was where I said, "Look, I have heard what you say but it is for me to decide, not you."

Q56 Marie Rimmer: This is a question to both of you. What is your view of the Cabinet Office's intention to include inspectorates in a review of arm's length bodies with regulatory functions, following on from the comparative work of the National Audit Office?

Nick Hardwick: It may be a way of addressing some of the issues. It is very important, but my concern is about whether they understand the difference between bodies who are carrying out functions on behalf of the Department and bodies who are actually examining the work of the Department itself. Mr Manzoni's letter does not make that distinction clear. That does not mean he has not thought about it, but it is not—

Q57 Marie Rimmer: You are saying that it is quite different.

Nick Hardwick: Yes. There is a critical issue about the relatively small number of bodies who are examining the work of Departments. Certainly in prisons, as Mr Hanson will know, Ministers are making operational decisions at one level, so in effect, you might be

criticising what a Minister is doing. In another function, on behalf of a Minister, you are making a quasi-judicial decision, as the Parole Board does, for instance. Even inspecting schools is a bit different; the Secretary of State does not run schools. In this case, that is the difference that makes the issues so acute.

Marie Rimmer: I understand. Mr Clarke, what is your view?

Peter Clarke: I do not want this to turn into an “I agree with Nick” session.

Q58 Marie Rimmer: Give us your view. You may want to express it differently.

Peter Clarke: But I do agree. The review from the Cabinet Office must take account of that important difference. When I answered Mr Hanson earlier about the desirability of having some form of protocol, just for the sake of clarity I was not referring to the Cabinet Office review as some means of pushing the whole thing into the long grass; it would be sensible to take account of what it says, but also to be very cognisant of the fact that, unless it says what it needs to say in understanding that difference and acknowledging it, it will be deficient.

Q59 Marie Rimmer: And no ambiguity.

Peter Clarke: One hopes not.

Q60 Marie Rimmer: That would need to be established, wouldn't it?

Peter Clarke: Yes.

Q61 Marie Rimmer: You have both expressed a desire to develop a deeper relationship with this Committee. Could you say a little more about how you think it would, could or should work?

Nick Hardwick: There are two things that could be useful to the Committee. Perhaps once a year when the annual report is published would be a good time for you to talk about the work of the inspector as opposed to what we are finding. When I did the job I would have welcomed that. On one or two occasions, the previous Committee asked us to look at things for them and provide evidence. Certainly I was very happy to do that, and that might be useful. If there is an area the Committee is interested in, often we have a set of information about it or we could pretty easily get it, and that might be helpful.

Q62 Marie Rimmer: Do you have any thoughts, Mr Clarke?

Peter Clarke: One area that might be fruitful for discussion is around thematic. It is entirely possible—indeed probable—that the Committee will have a view about some issues that could benefit from the inspectorate looking at them in a thematic way. That is one area to look at in the future.

Q63 Marie Rimmer: What is the risk of this creating another kind of undesirable political interference or influence over the inspector's work? How could that be avoided? We are all politicians around this table.

Nick Hardwick: The view I have always taken is that, as with the Secretary of State, you are elected and I am not. There are elements of the justice system, of which we are part,

which are very political. In the end, how you deal with offenders is a political question that needs to be resolved. I do not think that is an unhealthy thing provided there is the ability for dialogue and some discussion to resolve these things. These are political issues, and on the whole I think it is better that politicians take political decisions than officials.

Q64 Marie Rimmer: Absolutely. Mr Clarke, what do you think?

Peter Clarke: The subject is obviously inherently political by its very nature, but, as always, the thing to guard against is to make sure that the discussion is held in a way that is not politicised.

Q65 Dr Huq: This is a blue-sky thinking kind of question to both of you. If you were to go about drawing up a completely new governance and accountability model for the prisons inspectorate, how would you go about it?

Nick Hardwick: You mean, what would be in it?

Dr Huq: Yes.

Nick Hardwick: First of all, there is a small number of other bodies that are in a similar position to us; in a sense they are inspecting the work of Government rather than doing something on behalf of Government. Some of them have structures; for instance, the National Audit Office has a structure and it has a relationship with the Public Accounts Committee. We might look at how that works, for instance. That would be a place where I would look. I would look at other examples of that. If you had a small group of similar organisations doing similar work, it might be possible to put in place some sort of structure for all of them that would work in terms of both the mechanics and how you safeguard its independence while holding people properly accountable. In an ideal world, I would not look at it in isolation; I would look at it in conjunction with organisations that have a similar function. If that is not going to happen in the short term, the answer is a clear understanding about rules of engagement that have, if not external oversight, some external interest from another body such as this Committee, which every so often asks, “How is this going?” The fact that you were going to ask that—that once a year, for instance, we have to come and explain how things are working—would mean that these questions are less likely to be forgotten than maybe has been the case in the past. I have an ideal scenario, but it does not seem likely to happen now. I would not let the best be the enemy of the good. You could do some other things that would be helpful.

Q66 Dr Huq: What sort of other things?

Nick Hardwick: For instance, you could look at some of the other inspectorates in the criminal justice field, like the probation inspectorate or the prison probation ombudsman. Outside that, you could look at the Equality and Human Rights Commission. Those are other bodies that have a similar function.

Q67 Dr Huq: Mr Clarke, I know you are very new—48 hours or maybe 49 hours by now.

Peter Clarke: Yes; not much time to look at the blue skies since I spent yesterday in a high security prison. If the invitation is to be completely blue sky in the thinking, and if there were to be the will or imperative for significant legislative change about the whole current position of the inspectorate, a model that one might want to think about is that which is

perhaps more closely aligned to other non-departmental public bodies, where you have a governance structure with possibly a non-executive chair, non-executives, a board, an audit committee and all those things. I certainly do not look instinctively to create bureaucracy where it is not necessary. Of course, very often that is quite a clunky piece of machinery. If there were to be a really strong desire to change things, it might be a possible model to think about, or a version of it.

Q68 Chair: Do other colleagues wish to ask questions of Mr Hardwick or Mr Clarke? Before we finish, how is the handover period going? Are you finding it helpful, Mr Clarke? Is it long enough?

Peter Clarke: It is long enough, I think. I have experienced short and long handover periods in the past, and they both have their strengths and weaknesses. The inspectorate and Nick have been kind enough to put together a very helpful handover and induction programme. If I may say so, it is pretty intensive. Immediately from here we are heading off together on more visits. It looks very good and helpful. Of course, the induction as such will carry on for several months.

Q69 Chair: After you came before us last time, you will remember that we recommended that perhaps within about three months we should have a strategy plan going forward.

Peter Clarke: Yes, and perhaps a conversation we might have between now and then is how that aligns with the business planning process so that we do not start replicating and duplicating things that are already in hand. I think that is a conversation we will be having next week.

Q70 Chair: Are you happy to come back to us in about three months' time and talk to us about that?

Peter Clarke: Yes.

Chair: Mr Hardwick, thank you very much for your service as chief inspector. It is much appreciated and great service has been done by you. We are very grateful to you. It is good to see you again, Mr Clarke, and the very best for when you take over.

Witnesses: **Richard Heaton CB**, Permanent Secretary, and **Indra Morris**, Director General, Criminal Justice, Ministry of Justice, gave evidence.

Q71 Chair: Good morning, Mr Heaton and Ms Morris. Thank you very much for coming to give evidence to us at fairly short notice. I appreciate your taking the time to rearrange your diaries to deal with the issue. Mr Heaton, you are a familiar face to us as permanent secretary, but it is the first time Ms Morris has had the pleasure of giving evidence to us.

Indra Morris: It is, Chair.

Q72 Chair: Welcome. How long have you been in post now?

Indra Morris: I arrived in the Ministry as the director general for criminal justice last April, from the Treasury.

Q73 Chair: Most of your career has been in the Treasury and outside.

Indra Morris: The Treasury, the Department of Social Security and, yes, 10 years in the private sector, local government and the voluntary sector. It is quite varied.

Q74 Chair: Criminal justice is a new field.

Indra Morris: Yes.

Q75 Chair: I would like to start with Mr Heaton, but obviously Ms Morris will answer wherever appropriate. We want to touch on the exchange of correspondence between Mr Hardwick, the outgoing chief inspector, and yourself—your response to the letters of 1 and 8 December. We have copies before us and I am sure you have them as well. For the sake of completeness, they are published on the Committee’s website.

Richard Heaton: I have seen them.

Q76 Chair: I am glad that people watch us on the website.

Richard Heaton: It is in the Twittersphere as well.

Q77 Chair: I want to kick off with some issues. Was this all a mistake?

Richard Heaton: There was quite a significant misunderstanding in the correspondence.

Q78 Chair: Where was the misunderstanding, do you think?

Richard Heaton: I know opening statements are not welcome, but can I put on record, this being the end of Nick Hardwick’s tenure, that I want to say how much we respect the way in which he has carried out the important job of inspector. The way he has done it has earned the respect and admiration of everyone in the Department and in the sector, including in the parts of the Department that are directly inspected by the inspectorate. We value the role of inspector and its independence, and in particular the way that Nick has discharged it. I just wanted to say that.

Q79 Chair: That is very proper and thank you for saying it. I think we would all agree with you.

Richard Heaton: There was a misunderstanding. On the other hand, there was a set of spending controls that did not go down well. I will give you a bit of context on both of those. When I came into the Department at the beginning of September, the Secretary of State and I saw that the Department had quite a serious projected overspend. This had been such a significant issue in the life of the Department that the Committee might well want to return to it on a separate occasion and to look in depth as to how we got there and the steps we have taken to reverse out of the projected overspend.

Q80 Chair: How long had that overspend been going on? Was it a pattern that had built up?

Richard Heaton: No, not at all.

Q81 Chair: Was it just that year?

Richard Heaton: In particular, it was a 2015-16 issue. I can explain in great detail but probably not now—it may not be appropriate though I am very happy to—the circumstances that led to the projected overspend. It is in the context of the Department

saving lots of money over the SR10 period but being given a particularly challenging settlement on income and a couple of other things that did not work our way. I inherited the position where we had a projected overspend that was very serious. Being an accounting officer who is not allowed to authorise or spend money other than voted to me by Parliament, I had to do something about it.

We did a number of things. We looked at all our projects and programmes and saw which ones we could turn off or switch to the right and so on. We also instituted some emergency spending controls, because that is one of the things you just have to do if you are faced with that sort of projected overspend. We put them together in some haste and it may be that the initial cuts in the spending controls were not sufficiently clear, but I required all discretionary spend—in Nick Hardwick’s case that is all non-front-line spend such as travel, external recruitment and back office functions—to be approved by the Ministry. It was very unusual, but I was also mindful that there are arm’s length bodies and other areas in the Department that require freedom of operating, so I wanted it to operate flexibly. There was a request for spend that Nick put in, which he discussed with Indra. There was a misunderstanding, in that I think he was led to believe, or he believed, that he would have to come to us week after week to say, “Can I hire an associate to do this report? Can I hire an associate to do that report?” That was not the case. The approval we gave him when we understood the nature of the request was, “You can hire the associates you need for the rest of the financial year.” There is a degree of misunderstanding, but that is not to say that the spending controls were popular. They were not popular in any part of the Department or its arm’s length bodies.

Indra Morris: As a bit of context, there were 40 items of spend that the inspectorate came to us with, along with other ALBs in November, eight of which I asked questions on, four of which were not resubmitted because the inspectorate decided they were happy as they were, and on four they then came back with further information. They were all agreed, or it was agreed that we did not need to talk about them further. They have not had to do any since. That was partly, to give them credit, because they had a pretty clear view and handle on what their projected discretionary spend items were for the rest of this financial year.

The one I think you are particularly interested in, and on which Nick’s letter focuses, is the associates. There are two issues with that which have been extremely instructive. One is that in my view it should not have had to come to us in the first place. I have come to this relatively fresh. We had a letter with delegated front-line posts on which the inspectorate had complete freedom to make decisions without any recourse to public appointments or the Department; it was last updated in 2013. Associates were not mentioned in that. I queried it, because it was put to me as £200,000 of consultancy spend. Actually, as it turns out, it is not consultancy; it is a contractor internal agency. As Nick pointed out, it is about front-line delivery of inspections; it is their flexible resource model. I got a message on about 24 or 25 November: “We need to talk, because this is an issue that affects me next week.” I was very clear: “Look, that is not the intention. Don’t worry about next week; we should have a call.”

Nick and I then had a call. I think he was in Dublin airport on the Friday evening. He was coming back from something. By that point he already had confirmation, for which he thanked me, that this was not an issue, and it was not something we were going to question.

Q82 Chair: So there were not going to be weekly controls.

Indra Morris: No. At that point, I had said that I was absolutely happy for the spend to proceed. Actually, if we had had an up-to-date list between us, it would not have come to me in the first place. At that point, for me, the priority was to take away any doubt in Nick's mind that there was any objection from us. It is absolutely clear that there was not, because it was clear what the purpose of both the associate editors and the inspectors was.

I take responsibility absolutely for the point about weekly approval. What I was trying to do was explain to Nick a bit of the context. It was resolved—he had had that in writing—but there was an ongoing weekly process, where we were looking at submissions and putting a report to the permanent secretary. As I said to him, I was being challenged on the conversations that I was having with both my own teams and the ALBs. That is clearly where I left the impression with Nick that it was not resolved—that it was resolved for that week, but we had to come back weekly.

When I saw his letter of the 1st—I was a bit slow to clock that, because to be honest, I thought that it had been very clear—I personally picked up the phone to him. I did not wait for a meeting to be booked. I picked up the phone and said, “Hands up. If I have created any confusion, that was absolutely not the intention. In my view, this is all resolved.” As I said, they have not come back to us with anything since.

Q83 Chair: On the face of it, weekly controls on a body that has to be independent and has a process to carry out would seem to be extraordinary micromanagement.

Richard Heaton: It would probably be intolerable. I can see absolutely why Nick wrote in the terms that he did.

Chair: I understand. That is very helpful.

Q84 Marie Rimmer: What was the time lapse before this misunderstanding was clarified for Mr Hardwick? Had it already got to the stage of not being able to use those staff next week?

Indra Morris: On 24 November, my team issued an email to the inspectorate in which I asked for information. There were four items on which we said that we wanted information. On the associates, I said that I was not minded to agree until I had additional information.

Q85 Marie Rimmer: That was on 24 November.

Indra Morris: On Thursday 26 November, it was made clear to me that that would risk having an immediate impact on the inspection plans that week. The message was communicated that same day that that was not the intention—we were not talking about Friday, he should not worry about it and he should proceed. That same day, I was able to look at the additional information that the team gave me in writing. They said, “That is proved, so that is now resolved.” That is why, when I spoke to Nick on the Friday—the next day, which was the 27th—at about 5 pm, he said, “Thank you. I am glad that is sorted.” That is when I tried to explain the context of the weekly cycle and left him with the impression that, on that item, he was going to have to come back weekly, which would clearly be nonsense.

Q86 Chair: The weekly cycle is something different. It is the way you review things. I get that.

Richard Heaton: Each week I sit down with the Department's lead non-executive and look at all the requests for spending from across the Department.

Q87 Chair: I get that part. Thank you; that is helpful. Obviously you had to impose that on all the arm's length bodies. Out of interest, did you have representations from other arm's length bodies?

Richard Heaton: We may have had some from one other. I do not detect much noise on it. Nobody much likes the spending controls, but I do not detect too much noise from the arm's length bodies.

Indra Morris: I have not had any. I have had a similar discussion about issues where I raised a query. To be honest, some of this is about sending a signal, including to teams, to think about whether we are doing things that are absolutely necessary and shopping around for the right price for things like external venues—quite sensible things. The probation inspectorate, for example, submitted 19 items, only four of which were queried and then agreed. The prisons and probation ombudsman submitted 18, 17 of which were agreed without discussion. My former colleagues at the Treasury might say that I am being rather soft, but it is more about being reasonable with the ALBs in this context.

Q88 Chair: Is the inspectorate like any other ALB?

Indra Morris: We treat the inspectorates differently. In the Ministry of Justice, we have a tiered approach that takes into account things like the statutory independence of the role, the degree of risk and so forth. The prisons inspectorate, for example, is classed as tier 1, which is the least direct engagement. There is a risk—Nick has picked this up, and I certainly agree—that that has meant that we do not have clear enough protocols about what the arrangements should be. Indeed, Nick Hardwick said to you in his evidence last year that he did not feel that we were sufficiently challenging on spending. No, we do not treat them in the same way.

Q89 Chair: The question of protocols will be raised by some of my colleagues shortly. Mr Heaton, can you remember—in ballpark figures, at any rate—the size of the overspend you were confronted with in this situation?

Richard Heaton: At its peak—it has been coming down because of what we have been doing and other things—it was several hundred million. I characterise it as an overspend, but it was more a failure to meet some savings targets and particular income targets. It was several hundred million, so it was pretty substantial.

Q90 Chair: Did that come as a sudden surprise? You arrived in September last year. Were there already signs of it?

Richard Heaton: It was already being projected. We went into emergency measures pretty immediately.

Q91 Chair: That is helpful. Thank you for clarifying what happened.

Mr Heaton, your letter of 8 December deals with the immediate issue that is troubling Mr Hardwick. There seems to be common ground about the weekly matter and the fact that he can go ahead and hire until the end of the financial year. A lot of Mr Hardwick's letter deals with a broader point. He is suggesting—I hope this is not unfair—that this is indicative of an issue about the relationship between the inspectorate and the Department and the inspectorate's ability to be genuinely independent, as opposed to independent in name but constrained in what you can do, if the paymaster limits you unduly. Is that a fair characterisation of much of his letter?

Richard Heaton: Yes, it is. It is undoubtedly the case that with the levers at my disposal, if we chose to operate them in a certain way, we could undermine Nick's independence. That is certainly true. Constitutionally, the framework allows for independence and lack of independence. We would say that it is possible to operate as chief inspector with the functional independence required. Nick's tenure has demonstrated that, in a sense, as have those of his predecessors.

The statutory framework requires us to behave in a particular way. I remember that when I first came across the inspector's job, when Judge Tumim was doing it in the early '90s, his office was right next door to the Home Office library and canteen. It was embedded in the Department, which felt wrong. Now Nick is not co-located. He has won a separate website. Within the framework, there are things one can do to achieve greater or lesser independence. We would say that the statutory framework and the fact that Nick is accountable to the Department, not directly to Parliament, do not in themselves mean that independence cannot be guaranteed, but it is clearly a debatable matter.

Q92 Alex Chalk: Whatever the intention, this has all been a bit unseemly and unsatisfactory, in a sense. Has the time come for a written protocol to prevent something like this happening again in the future?

Indra Morris: Absolutely. I agree.

Richard Heaton: I have been in several Departments and looked after several arm's length bodies with greater and lesser degrees of independence. A framework document is absolutely essential. It is slightly surprising and disappointing that we do not have one in place. It is pretty high on the list of things to be done with the new inspector.

Q93 Alex Chalk: In fairness to Mr Hardwick, he made it perfectly clear that he feels that in the content of his reports he has complete independence, which is of course reassuring, but, in terms of the process, it cannot be beyond the wit of man to generate something that would demarcate accurately the responsibilities and independence.

Indra Morris: I agree.

Chair: That is helpful.

Q94 Marie Rimmer: Mr Hardwick lamented somewhat that he had tried to get some acceptance of the inspectorate's relationship with the Ministry clarified in a protocol and that it has not yet happened. We understand that there is a draft protocol. Is that the case?

Indra Morris: My team drafted a protocol; that is right. I looked at it and said, "I don't think this is the way I want to go about it. This is not the nature of the relationship we

should have with an independent inspectorate, where we just give them a draft. We should be sitting down and identifying the questions, challenges and areas of content.” In the enthusiasm to get it done, they had done a draft, but I want an initial, in principle conversation about what we are trying to achieve and what we need to do. As you know, there is basic good practice from the Cabinet Office—public bodies governance—that we need to draw on, but it needs to be a two-way dialogue. It is partly about the obligations and duties on the inspectorate and partly about those on the Department.

Q95 Marie Rimmer: Would you agree to share that draft with the Committee and accept comments from us, before it is finalised?

Indra Morris: I would be happy to share the draft I am happy with and have discussed with both inspectors. I want to take both Nick’s and Peter Clarke’s views.

Q96 Marie Rimmer: Will you also develop similar protocols for the inspectorate of probation and the prisons and probation ombudsman?

Indra Morris: That would make absolute sense. We have them—some of them are in the Library of the House—for the Law Commission, the Judicial Appointments Commission and so forth.

Q97 Marie Rimmer: Given your willingness to share the first one with us, would you share those with us as well for our comments, before they are finalised?

Indra Morris: Yes, absolutely. This is an important debate about confidence, shared understanding and being clear about where there are different views and where we might not resolve those differences.

Q98 Mr Hanson: For the benefit of the Committee, when would you expect such a protocol to be finalised?

Indra Morris: I would like to talk to the new chief inspectors about that. I can then get in touch with the Committee and let you know, if you are content to proceed on that basis.

Q99 Mr Hanson: Mr Hardwick informed the Committee not half an hour ago that he was not aware that there was a draft. Why would that be?

Indra Morris: Because that draft has not gone anywhere. As I said, I am not happy with the approach of doing a draft and issuing it for discussion. I want to have a sensible discussion with the chief inspectors about what questions we need to address, drawing on both their experiences so far and good practice in how we do things.

Q100 Mr Hanson: Can we take it that there is a commitment that there will be a protocol between the chief inspector and the Department?

Indra Morris: Absolutely.

Q101 Mr Hanson: In his letter of December, Mr Hardwick said, “I have sought unsuccessfully to establish protocols.” Who stopped that previously?

Indra Morris: I know that this is a frustrating answer for the Committee to hear, but that has not been raised with me since I arrived. My focus has been on the priority of getting a

good recruitment process for the replacement chief inspectors. From talking to the team and a bit to Nick himself, I know that there were discussions about that in the last Parliament.

Q102 Mr Hanson: What will successfully make a protocol happen if one did not happen previously?

Indra Morris: Because we agree. I agree absolutely that it is needed. I have seen at first hand why it is needed. It is as simple as that—we agree.

Q103 Mr Hanson: Is there ministerial buy-in to that agreement?

Indra Morris: Yes.

Q104 Chair: There seems to be consensus that a protocol is desirable, from the point of view of all sides, to ensure independence. That point was fairly picked up by Mr Heaton earlier; the inspectorate has to be seen to be independent.

Indra Morris: Absolutely.

Chair: That leads me to another issue that I wanted to raise. Mr Costa, do you want to come in on this one? I will come back to a separate topic about protocols.

Q105 Alberto Costa: Can I clarify the protocol? You said that you will take Mr Hardwick's view on it. If Mr Hardwick's view contrasts, in part, with that of his successors, what mechanism will you adopt to ensure that the view of Mr Hardwick, who has had many years' experience as an inspector, will be taken into account?

Indra Morris: As I said, I want to have a discussion with him, given his experience. Ultimately, the agreement will be between the chief inspector—the holder of that statutory post—

Q106 Alberto Costa: Is it not a bit convenient that you are doing this when Mr Hardwick has left, notwithstanding his repeated requests for it?

Indra Morris: I have not had repeated requests for it. I recognise that when people change posts that is a slightly frustrating response for the Committee.

Q107 Alberto Costa: Why can't you commit to taking into account Mr Hardwick's experience and ensuring that his views are—

Indra Morris: I thought that I had said that, personally, I want to take those views. I also want to be clear that it will be for the chief inspector formally to decide what he is or is not happy with. I am sure that the views of the Committee will be part of that debate.

Q108 Chair: Are there any other questions about the protocol? I think that that is now understood.

The other area that arises—it is alluded to in Mr Hardwick's letter to Mr Heaton—is this. We have a question of budgetary independence, in the sense of the inspectorate having enough resource to do its job without fear or favour and undue interference, within the constraints that you have. We have talked about that in terms of protocols to know where

everybody stands. There is another unresolved issue about the appraisal of the chief inspector. It has been characterised as a bit of an impasse between the Department and Mr Hardwick, as the outgoing inspector, about who should appraise him. What role should the Department have?

Richard Heaton: The Ministry has a general approach to appraisals of this nature that the individual's performance, development objectives and all the rest of the stuff that would normally follow a management appraisal should not apply, but that there should be an appraisal of the performance of the organisation against its objectives. Broadly speaking, that is our approach. There has been a bit of an impasse. I do not think that there has been an annual appraisal process for two or three years.

Indra Morris: Since 2012.

Richard Heaton: That is something on which we and Nick probably disagree. We think that there is probably room for appraisal against objectives and so on. Indra, do you want to add to that?

Indra Morris: The use of the word "appraisal" is part of the issue. The proposal for all ALBs, whether it is for the chairs or for the postholders, is that the discussion should be about the delivery of the business plan, not the individual's performance, the content of what they say or the content of their inspections. It is incumbent on us, as a sponsoring Department, to have a good, structured annual discussion about how things are. That could be of value to the inspectorate, if we do it right. Indeed, in the past the inspectorate has said that there is not enough accountability and they feel that it is a bit piecemeal and random. That is one of the things that we need to address in the protocols. What is not clear in my mind is whether we have a fundamentally different view or whether there is room for some consensus, but not to have anything does not seem sensible.

Q109 Chair: The issue is this, isn't it? Inevitably, sometimes the chief inspector may have to say things that may not always be welcome in the Ministry.

Richard Heaton: Absolutely.

Q110 Chair: That is part of their job.

Indra Morris: We would hope so.

Q111 Chair: We do not know that in advance, of course. Do you understand the perception, therefore, that you have to be careful about how the Ministry appraises someone who is tasked by statute with inspecting it?

Richard Heaton: I do. The person carrying out the appraisal, whether Indra or me, would have to be absolutely sensitive to that. We would be crass and stupid if we undertook something that said, "Your perception of this prison or that establishment was wrong." We would not do that. It would be about performance against objectives, performance against budget and the number of reports—that sort of thing.

Q112 Chair: I have no doubt about the sensitivity that you yourselves would use. There is always a risk, I suppose, with different officials or different Ministers. Is there a risk

structurally that the Department is seen to be judge in its own cause, in effect, if it is appraising a person who is the inspector of one of its functions?

Richard Heaton: There is a risk. Perhaps we would not use the word “appraise”, as Indra said. Perhaps we would earn a reputation for doing it properly. I hope that we would gain that reputation. It would simply be good housekeeping, good sponsorship and good stewardship, and that is how it would be perceived. That is what we would aim for.

Q113 Chair: So far, there is no meeting of minds on that. Is it an issue that you have discussed with Mr Clarke?

Richard Heaton: I have not.

Indra Morris: I have not either.

Q114 Chair: We will not press you on that. I understand that it is early days for him.

Q115 Mr Hanson: The Cabinet Office is looking at regulatory bodies in its general second-stage review of independent bodies. Have you, as Department officials, or have Ministers, taken a view on whether or not there should be changes to the nature of the prisons or probation independent inspector as part of that review?

Richard Heaton: As you know, we have just recruited a new inspector for each of the two posts. That implies that we have taken a view that the two posts should not be brought together, for example. We have not made any moves to change the statutory framework, which I know is an issue of great interest and discussion. It follows that we have taken a view that the status quo remains suitable. The broad answer would be that we have not taken a view that there should be fundamental reform.

Q116 Mr Hanson: Why has the Cabinet Office included those two bodies among the criminal justice inspectorate bodies that are part of the general review of regulatory functions?

Richard Heaton: We have not closed our mind to future changes, but we have not taken a view that there should be a change in the constitutional arrangements.

Indra Morris: I thought that had been put off. Perhaps I need to check that and to get back to the Committee.

Q117 Mr Hanson: It would be helpful to be clear. Our understanding is that the Cabinet Office review includes criminal justice inspectorates for the 2015-20 period.

Richard Heaton: Let us get back to you on that.

Indra Morris: We will check. I do not think that that is the case.

Chair: I am grateful to you for agreeing to come back on that, Mr Heaton.

Q118 Philip Davies: The problem with all this is that people get very cynical about Governments and civil servants. I am probably more cynical than most. What people might conclude from what we have heard this morning is this. Indra, you said that you had not prioritised the protocols because you were busy putting together the recruitment process for

the inspectorates. When we did the pre-appointment hearing, it seemed to us that the extent of the recruitment process for both posts was the Secretary of State ringing up a couple of pals and saying, “Do you fancy having this particular job?” What people might conclude is that there was not a fat lot of work that went on behind the scenes for the recruitment process—rather, it was a couple of phone calls from the Secretary of State to a couple of old muckers he used to work with when he was in Education.

Mr Hardwick is not particularly to my taste, given the reports he came up with, so I have no particular axe to grind on his behalf; but it seems to me that he has been too much of a fly in the ointment, and you said, “Let’s put this off until he has cleared off. We will get more of a patsy in the position, and he’ll be in a much better position to agree to the protocols that we want to put in place. Because we have given him the job, because he is a mate, he’ll be a lot more compliant with the protocols that we want.” What would you say to that, which might be described as a cynical but perhaps popular view of what the Department is up to?

Indra Morris: That is a rather depressing view, and not one that I recognise. I come back to what Richard said at the beginning. It is really important for us not to understate the importance and value of a strong independent inspectorate in both prisons and probation.

When I arrived last year, one of the things that was said to me was, “Look at the experience of the recruitment process so far. The biggest risk you have is that you don’t attract a strong, credible field and a strong, credible choice.” That was my top priority. We had a very good independent external search company, which I was very impressed by. I have worked with a number of them in the past, and I am not always impressed by their rigour. We had a competitive field. Yes, we asked people to get out there and encouraged them to apply. We encouraged a greater breadth of people, who might not have considered it. To be frank, it is still a slightly wider regret that we did not get more women interested in the prisons inspector role.

I was part of what I felt was one of the best panels I have ever been part of for a public appointment. It was chaired by an independent commissioner, with myself and two other members. We spent more than three days together, in total, on both the shortlisting and the interviews. The chair made his report, reflecting our views on the appointable candidates. We had a good choice. I am really confident of that.

Q119 Philip Davies: If the head-hunters did such a brilliant job of putting together such a fantastic field of people to choose from, how come the best person for the job happened to be not somebody they had come up with, but somebody the Secretary of State had rung up and asked, “Do you fancy applying for this post?” If the head-hunters had come up with a magnificent field, presumably they would have come up with somebody better than the Secretary of State did just by ringing up an old pal at the Department for Education.

Indra Morris: I think at least one of them already had a meeting with the head-hunters in the diary. She may have mentioned that to you in her evidence. I have not done any cross-checking, but I could not have been happier with the process.

Richard Heaton: Just as I started with a tribute to Nick, we are confident that the two new people who will fill these important posts should not be characterised as a couple of old muckers of the Secretary of State or patsies or mates. I am sure that if they had been characterised like that the Committee would not have approved their pre-appointment

hearings. We have two good candidates and we look forward to working with them. They will be every bit as independent as Nick. I am sure that they will do the job excellently.

Q120 Alberto Costa: You should not assume what we did or did not think when we were asking those questions.

Richard Heaton: I beg your pardon.

Q121 Alberto Costa: Actually, we were very concerned about the telephone calls your Department did not list and did not have a proper file note about. I was particularly concerned that a Secretary of State would telephone people at home.

Indra, in the answer that you just gave, you talked about encouraging people to apply. Is it your understanding that the telephone call that the new inspector of probation received from the Secretary of State was one in which the Secretary of State encouraged her to apply?

Indra Morris: No. I cannot remember the exact words that she used to describe it to the Committee, but I think she said that it was just mentioned to her. To be honest, I do not have the transcript in front of me.

Q122 Alberto Costa: Since you were involved in this recruitment process, can you confirm to the Committee that all the applicants were similarly called by the Secretary of State? If not, how many of them were called by the Secretary of State?

Indra Morris: I very much doubt that they all had calls. I cannot confirm—

Q123 Alberto Costa: Do you know whether more than two people received calls from the Secretary of State?

Indra Morris: No.

Q124 Alberto Costa: You do not know.

Indra Morris: No.

Q125 Alberto Costa: And you did not make it your business to find out.

Indra Morris: No. I made it my business to be part of an independent panel that looked at the evidence and quality of the applicants, did the sift and the shortlist, and then interviewed and gave our views on appointable candidates.

Q126 Chair: At the end of the day, many of us would think that all of this reinforces the need for a protocol to make sure that there is not the sort of misunderstanding that has caused us to have this session or the cynicism Mr Davies referred to, which does exist out there. That is best avoided. Could we have a timetable for the production of the protocol? Everybody seems to think that it is a good idea.

Indra Morris: Could I come back to the answer I gave earlier? I would like to agree that timetable with the relevant chief inspectors and then share it with you. Of course, it will be up to you to push back as to whether that is quick enough. That would be appropriate, given their independent role.

Q127 Marie Rimmer: How will you involve Mr Hardwick, if you are going to agree a timetable with the inspectorate? Will he have left by then?

Indra Morris: We have a two-week shadow period that we could use.

Q128 Marie Rimmer: So it will be in the next week.

Indra Morris: I want to have a conversation with Nick, certainly.

Q129 Marie Rimmer: It will be imminent.

Indra Morris: What do you mean by, “It will be imminent”?

Q130 Marie Rimmer: You are going to take Mr Hardwick’s views—

Indra Morris: As you know, Peter Clarke has not started formally, although his shadow period starts on 1 February. As a courtesy, I will not bounce him with this. Similarly, Glenys starts on 1 March.

Q131 Marie Rimmer: So it will not be agreed before Mr Hardwick leaves.

Indra Morris: No.

Q132 Marie Rimmer: But you will take Mr Hardwick’s views.

Indra Morris: Yes. That is important.

Richard Heaton: I am sure that is what you would expect.

Q133 Chair: Indeed. I am sure that that is acceptable to most of us. From all that you have heard, I am sure that you will agree that it is in everybody’s interest to have this done sooner rather than later.

Indra Morris: Yes. I recognise that.

Q134 Chair: We know that Mr Clarke is helpfully going to come back before us. It would make life much easier for him if the protocols were well established and in operation before that time arrived. Perhaps you could kindly keep us posted and correspond with us on this, because it is an issue the Committee, and yourselves, I gather, set considerable importance by.

Richard Heaton: Agreed.

Chair: Mr Heaton and Ms Morris, thank you very much. I look forward to seeing you both again, as I am sure we will at some point.