



## Justice Committee

### Oral evidence: Criminal justice inspectorates and the Prisons and Probation Ombudsman, HC 415

Tuesday 5 July 2016

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Written evidence from witnesses:

- [Prisons and Probations Ombudsman](#)
- [HMI Probation](#)
- [HM Crown Prosecution Service Inspectorate \(HMCPSI\)](#)

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Members present: Robert Neill MP (Chair); Alex Chalk MP; Alberto Costa MP; Philip Davies MP; Chris Elmore MP; David Hanson MP; Dr Rupa Huq MP; Victoria Prentis MP; Marie Rimmer MP.

#### Questions 1 – 95

Witnesses: **Peter Clarke**, HM Chief Inspector of Prisons, **Dame Glenys Stacey**, HM Chief Inspector of Probation, **Kevin McGinty**, HM Chief Inspector of the Crown Prosecution Service, and **Nigel Newcomen**, Prisons and Probation Ombudsman, gave evidence.

**Q1 Chair:** Good morning, everyone, and welcome to our witnesses. Thank you all very much for coming to give evidence to us in this one-off session on developments with the various inspectorates. I know that some of us have talked about some of the issues before, but it gives us a chance to revisit where we are. For the sake of the record, could each of you introduce yourself? We will then move into the questioning.

**Nigel Newcomen:** I am Nigel Newcomen, the prisons and probation ombudsman.

**Peter Clarke:** I am Peter Clarke, the chief inspector of prisons for England and Wales.

**Dame Glenys Stacey:** I am Dame Glenys Stacey, Her Majesty's chief inspector of probation.

**Kevin McGinty:** I am Kevin McGinty, the chief inspector of the Crown Prosecution Service.

**Q2 Chair:** Congratulations, Dame Glenys.

**Dame Glenys Stacey:** Thank you very much.

**Chair:** Do members have any declarations of interest? I do not think there is anything that is relevant. There are the obvious ones. I am a non-practising lawyer.

**Alex Chalk:** For the sake of an abundance of caution, I have a brief for the CPS.

**Alberto Costa:** I am a practising lawyer.

**Victoria Prentis:** I am a non-practising lawyer who used to work a great deal for the Prison Service.

**Q3 Chair:** Those are all fairly remote from the purpose in hand but worth getting on the record. Can I start with you, Mr Clarke? We had some evidence and helpful discussion about the issues that arose between your predecessor and the permanent secretary around funding, some management issues and concern to ensure independence for the inspectorate and its resourcing. We were told that there was agreement on the protocol. What is the position with the protocol? Do you have it yet?

**Peter Clarke:** There is a draft. I have to admit that it is taking longer than I had hoped because of some changes in senior personnel at the Ministry of Justice over the past few months, but the process of drafting is in hand. I am quite pleased with the way that is progressing. It covers the areas that we wanted to cover on the respective roles and responsibilities. There is explicit recognition of the independence of the inspectorate in it. It sets out very clearly the role of the permanent secretary as the accounting officer. It also recognises the role of the inspectorate as the co-ordinating member of the national preventive mechanism, which is an important element—a brick in the wall—of our independence. The drafting of the protocol is in hand. I hope very much that by early autumn we will have a finalised version that we can share with you.

**Q4 Chair:** That will be helpful. I get the sense that you are satisfied that this is about procedural delays, rather than any issue of substance.

**Peter Clarke:** Absolutely. I am pleased to say that, in the meantime, the issues that caused Nick Hardwick concern around some of the detailed controls over spending, in a way that he perceived as impinging on his ability to deliver the operations of the inspectorate, have receded. Those spending controls have been lifted. We now have the ability to spend as we need, and to plan our operations. At the moment, it is in what I would call pretty good shape.

**Q5 Chair:** We look forward to seeing the draft as soon as it is available. Thank you for the offer to make it available to us. Dame Glenys, as I recall, your organisation says that it is prioritising producing a draft protocol along broadly similar lines, as appropriate.

**Dame Glenys Stacey:** The position is that there is an intention in the Ministry of Justice that we should be subject to a protocol, just as HMI Prisons will be. The Ministry of Justice has been making its first attempt at that with HMI Prisons. The notion is that, once we have made sufficient progress there, we will see that some aspects of it will be relevant to us, and common between us, but some will not. It is a sequential business in the

Ministry of Justice, with HMI Prisons in the vanguard, to get their protocol agreed, with us due to come in behind, to get ours just so.

**Q6 Chair:** Have you had experience of any of the operational issues that Mr Hardwick had, which seem to be resolved in the prisons inspectorate?

**Dame Glenys Stacey:** We have not had the sorts of issues that Nick had. There have been occasions, before my time, when things seem to have taken a frustratingly long time, as I understand it, but since I have been doing the job it has not been difficult.

**Q7 Chair:** Does either of you have any issues with the MOJ, as the sponsoring Department, beyond the ones we have talked about?

**Peter Clarke:** A plea would be around recruitment. I fully understand that there needs to be transparency and openness in recruitment processes, but we are a very small inspectorate that is looking very often to recruit specialists for our particular inspection roles. We are obliged to use the shared service, the HR facility from the MOJ, which takes an awfully long time. If, for instance, members of our staff take voluntary retirement under a voluntary exit scheme, clearly we cannot anticipate that by recruiting people in advance, so we start a recruitment process. That can and does take many months, which means that we run the risk of incurring an underspend because we are not able to fill the posts. Incurring an underspend in times of austerity is not what I would call ideal financial management.

**Q8 Chair:** Have you posited an alternative to the Department as to how you handle that?

**Peter Clarke:** We have had discussions about it, but there is a system, which we are working with at the moment. There is a process currently under way. I shall take very careful note of how that proceeds and, potentially, go back to have further discussions about how we might free things up more.

**Q9 Chair:** Mr Newcomen, from the point of view of an ombudsman as opposed to an inspectorate, what is the situation with regard to your relationship with the Department? Do you need a protocol or some understanding of the relationship?

**Nigel Newcomen:** A protocol would be helpful. Some years ago, there were framework documents with the inspectorate and with the prisons and probation ombudsman, and I think they just fell into disuse. Some of the discussions that Nick Hardwick triggered are applicable at any particular time. It would be helpful to have the relationship set out more clearly. As it happens, I have not been approached as yet, so no discussion has started on a protocol. It would help to resolve some of the teething issues that can occur, although I have to say that in my five years in post I have not detected anything sinister at all in the relationship. I fear that the cock-up theory, rather than anything else, is applicable to the relationships.

**Q10 Chair:** That is helpful and is understood. Mr McGinty, your relationship is with the Attorney General's Department.

**Kevin McGinty:** That is right.

**Q11 Chair:** Have you discussed this with the Attorney General?

**Kevin McGinty:** I have.

**Q12 Chair:** What is the progress?

**Kevin McGinty:** Good. I am in a slightly different position from the other criminal justice inspectors, for two reasons. First, the AGO is a much smaller organisation than the Ministry of Justice, so it is much easier to make contact with the people you need to get in contact with. Secondly, unlike the other inspectors, I am my own accounting officer, so I am directly responsible to the Public Accounts Committee. Therefore, any protocol that I had would be much simpler than those of my inspector colleagues.

We could be ready now. The reason why we are not is that we would like to see what the MOJ comes up with in relation to prisons and probation. We think that it is in the public interest if they are as similar to one another as they can be, so that there is general understanding by the public of what we are arranging or agreeing with our Ministers. It is well advanced.

**Q13 Chair:** Do I get the sense that your current working practice more or less mirrors what you would put into the protocol?

**Kevin McGinty:** Absolutely.

**Q14 Alex Chalk:** You may have covered this, but I want to deal with it directly. First, do you feel that you have sufficient resources to do what you need to do? Secondly, are you given sufficient discretion to determine your own priorities?

**Peter Clarke:** Do we have sufficient resources? Obviously, I would always like to do more. At the beginning of this year, we originally put in an offer to the Ministry of Justice to achieve savings of some £300,000. When I took up the post, I withdrew that offer and substituted an offer of £150,000 in savings. I did that because the £300,000 offer was predicated on a reduction in the frequency of inspections of the children's and young people's detention estate. In the wake of what happened at Medway, I did not feel that the time was right to go down that course, so I withdrew the higher offer of savings. The Ministry of Justice accepted the lower offer, for which I am grateful.

Would I like to do more? Yes. Do we provide a reasonable level of inspection across all the areas that we inspect, which of course are not only prisons? I think we do, but I would like to do more. We have what we call a development project under way within the inspectorate that is looking at how we could squeeze out more from the resources we have.

**Dame Glenys Stacey:** Our position is not dissimilar to Peter's. We gave up £200,000 this year, so we are receiving £200,000 less this year than we received in the previous year. We calculated that we could do that without losing inspector staff—basically, by getting better at what we do. In that sense, it was acceptable.

The question of whether you have enough resource rather depends on what the expectations are of the inspectorate. Recently, we completed a consultation with Ministers

and wider stakeholders, including those who run CRCs and the NPS, setting out our stall—what we intend to do with the money that we have. We are not resourced, for example, to be able to rank or grade in any sufficiently confident way 21 CRCs and seven NPS regions, so we do not set out a stall that says that we would do that in the way HMI Constabulary does. It is much better resourced than we are. Instead, we are focusing on risk-based inspections and on increasing our thematic inspection work. It is always a question of whether you can do a decent enough job with the resource you have. Yes, we can. What is the best job you can do? This is what we think it is.

**Q15 Alex Chalk:** It goes without saying, of course, that we would all want more money and that you can always do more. How long is a piece of string? We accept all that. If I were to ask the straight question, “Do you have sufficient resources to carry out a satisfactory level of inspection?”; the answer to that appears to be yes.

**Dame Glenys Stacey:** Yes.

**Peter Clarke:** It is yes.

**Q16 Alex Chalk:** Is it yes for the CPS inspectorate?

**Kevin McGinty:** Yes. I represent probably by far the smallest of the inspectorates. One of the first things I had to deal with when I took office was the comprehensive spending review, when all departments were asked to say how they could meet reductions in their budget of 40% and 25%. Clearly, I could not do that. HMCPSI had been producing an underspend every year for some years, so there was obviously some money that could be saved. I offered a 15% cut in my budget, which was the same as the Attorney General’s Office itself offered by way of a cut. I also asked Jenny Rowe, who used to be the chief executive of the Supreme Court, to come in to carry out an internal review of my staffing arrangements. As a result, she made some recommendations for redundancies, which I am in the process of carrying through.

Yes, I think I have enough resources to carry out the job. I could do more inspections if I had more resources, but I have to remember of course that I am inspecting the CPS and the SFO, and the more inspections I carry out on those organisations, the greater the burden it places on them, too. My danger area, given the number of staff I have, is if any of them falls ill or takes another job, because it takes about a year and half to two years to train up an inspector. That is a risk for me.

**Q17 Alex Chalk:** That is very helpful.

**Kevin McGinty:** The second question that you asked was whether or not I had been asked to carry out—

**Q18 Alex Chalk:** I will deal with that separately. Very helpfully, you have dealt with the first bit first. I will whizz through the second one in a second. Can I give Mr Newcomen an opportunity to respond on the resources issue?

**Nigel Newcomen:** As the chief inspectors indicated, we would all like more resource. My situation is slightly different, in that I am entirely demand-led. Since I took up post,

tragically, there has been a 53% increase in the number of deaths in custody—a 21% increase last year alone, when I had a 4.6% reduction—so it is very difficult to say with confidence that I have enough resource. On the other hand, like all public services, you have to make do and mend. I deliver more for less. That goes with the territory, but there is a point at which it will be implausible to keep responding as well as I think we are doing to the number of deaths, and, indeed, the continued high levels of complaints. Bleating is not going to improve the matter.

**Q19 Alex Chalk:** I think you have dealt with the second point already, so it can probably be dealt with briefly. Are you satisfied that you have been given the appropriate level of discretion as to how to choose to allocate the resources that you have, without inappropriate intervention by the Department? I think the answer to that is yes.

**Peter Clarke:** Yes. Since the clarification that has emerged since we met on 20 January this year, I am happy with the discretion that I have.

**Q20 Alex Chalk:** That is very helpful.

**Dame Glenys Stacey:** Yes, but there is a rider I want to add to my last answer. We have the resources that we have. Inspection is a resource-intensive business. It is not a cheap affair, if you want a good inspection. For the Ministry of Justice, there is a relationship, of course, between the amount of money that is committed to an independent inspectorate and the amount that is committed to contract oversight in the new world—a world where the majority of probation services are delivered through community rehabilitation companies. The National Audit Office reported recently in relation to transforming rehabilitation. It reported that there are about 120 staff in the contractual oversight of CRCs and 30 or so in an operational assurance unit. It is of interest to us all that we see how that balance progresses and whether it changes over time, if the Department chooses to adopt a more risk-based approach to contract oversight, for example, once the thing is more bedded in. Personally, of course, I have a deep affection for independent inspection and believe that it trumps contract oversight in a number of important ways.

**Q21 Alex Chalk:** Mr McGinty, are you given sufficient operational independence?

**Kevin McGinty:** Yes, I think so. I try to arrange my programme so that I have a fixed number of inspections I want to carry out, but leaving some flexibility to allow ad hoc requests. Last year, I was asked to carry out one inspection by the Attorney General. There is a statutory power to require me to do that, and it was a welcome and interesting request. I also did one for the chief executive of the Crown Prosecution Service, on transforming summary justice. Both of those fitted into the programme, and fitted in well.

**Q22 Alex Chalk:** I suppose that it is slightly different for you, Mr Newcomen—

**Nigel Newcomen:** No. The frustrations were initially the same, with severe spending controls, but those have been relaxed, discretion has been returned and I am able to spend the delegated budget according to my preference, as far as I can, within the constraints of the MOJ's rather difficult human resource strategy.

**Q23 Alex Chalk:** That is very helpful. I want to deal with one last area, under the banner of whether you should be given more teeth, by which I mean should the Ministry and inspected bodies be required to respond to recommendations by the inspectorates and the PPO? If they decline to do so, should they have to explain their reasons? In other words, should you be given more teeth in that respect?

**Kevin McGinty:** That would certainly be one way of dealing with it. What we tend to do with recommendations we have made is that, after six or eight months, I write to the Director of Public Prosecutions to ask what recommendations have been followed and what actions have been taken as a result of those recommendations. That follows from the National Audit Office report, which asked how we were giving value for money and how we were making an impact. Under the new arrangements that the CPS has made internally, with the new chief operating officers, they plan to produce a report themselves on what they have done in respect of recommendations. I do not think it is a particular issue.

**Q24 Alex Chalk:** You do not need a formal stick, as it were. You think that it will naturally take place.

**Kevin McGinty:** Yes, I think so.

**Dame Glenys Stacey:** To give a formal stick to an independent inspectorate would be a bit unusual. Normally inspection falls short of those absolute powers. We have a little way to go, anyway, in the inspectorate for probation, because traditionally we have not always followed up consistently the recommendations we have made. The first step for us is to make sure that we do just that. It is particularly important that we do it in relation to the recommendations we make to individual CRCs and NPS regions where we are looking for immediate improvements. My experience so far is that, when we make recommendations that relate to the Ministry of Justice or the way the NPS is run centrally, we tend to get a very positive response, but perhaps none of that is sufficiently in the public domain. It may be that the lesson for us is around transparency—being more transparent.

**Q25 Alex Chalk:** That is fine. Focusing on the question, you are not looking for a stick.

**Dame Glenys Stacey:** No.

**Peter Clarke:** I take a slightly different view. I am not looking for powers of enforcement, because that would take us into the realms of being more of a regulator.

**Q26 Alex Chalk:** That is slightly different. The point I am making is about their being required to respond.

**Peter Clarke:** Exactly. A requirement to respond would be very helpful. What we see far too often is that we make a number of recommendations, go back to inspect again in two or three years' time and find that very few of those recommendations have been achieved. For instance, recently we reinspected Wormwood Scrubs prison, after a period of only about 14 months. In the previous inspection, we made 84 recommendations; only 17 of those had been achieved when we reinspected towards the end of last year. Perhaps it is hardly surprising that the prison had not improved but had, in fact, deteriorated in that time. That is not a unique situation. There are many others.

After each inspection, the inspected establishment is required to produce an action plan, which we publish on our website, but the follow-up to that is patchy. What I would like to see is not a power for us, but a requirement, as you describe, for the inspected bodies—the Ministry of Justice, NOMS or whoever—to set out their rationale for either accepting or rejecting our recommendation. That brings with it a degree of public accountability and, potentially, parliamentary accountability.

**Q27 Alex Chalk:** Yes. You can measure them against it. You can say, “Look, you said”—

**Peter Clarke:** “You said that you were going to do this. Why haven’t you done it?”

**Alex Chalk:** Exactly.

**Peter Clarke:** That would be a positive step. It would have to be thought through very carefully. I certainly do not want the inspectorate to begin to move into the realm of regulation.

**Q28 Alex Chalk:** No. I understand.

**Nigel Newcomen:** I fully support what Peter has just said. One of the frustrations of my time in office has been saying fairly similar things frequently and finding that there is a limited capacity for making inroads—not, it has to be said, for sinister reasons. Once again, I think that there are all sorts of other complications and pressures in the prison system that militate against straightforward delivery of some of the recommendations I make. Clearly it is not a satisfactory situation at the moment, where I go back again and again. Peter follows up some of my recommendations as well. We share the burden as best we can, to try to press the prison system, and, indeed, the other investigative bodies, actively to implement recommendations. Without moving into full regulation, a further tier of accountability would be helpful, simply so that we in the investigative bodies, yourselves and the public in general can see what is and is not happening.

As a footnote, there is another difficulty that I have raised with the Committee before and that the Committee has endorsed: my office is not even on a statutory footing, so even before getting to recommendations, I still have a deficiency in terms of being able to get unfettered access to people, places and records. It is all well and good having further action on recommendations, but I would quite like the whole of my office to be put on a suitable footing.

**Alex Chalk:** That is an interesting point, although perhaps a separate one. Thank you.

**Chair:** That is very helpful.

**Q29 Alberto Costa:** Could I turn to the pre-appointment scrutiny process and appraisals? You will be familiar by now with this Committee’s report of 27 November 2015 on the pre-appointment scrutiny of the two then suggested candidates for chief inspector of prisons and chief inspector of probation. Could I read a very quick extract from that report? The Committee said, “We recommend that Parliament, not Ministers, should recommend names for appointment to the posts of HM Chief Inspector of Prisons and HM Chief Inspector of Probation, by means of an Address to Her Majesty. We also consider that it would have been

better if we had been told by the Ministry that the Secretary of State had personally contacted potential candidates to draw their attention to the posts.” You have all been through the pre-appointment scrutiny process with this Committee or our predecessor Committee. What do you think are the strengths and weaknesses of the process?

**Peter Clarke:** The strength of the process is that it is open and transparent at this stage. The comment I would make is that, by the time I got to the pre-appointment hearing, it was the sixth stage of a very long public appointments process, which I think had been going on for some six months since the advertisement appeared. There were 17 applicants for my post, I believe, and all sorts of hoops to jump through during the appointment process.

Concerns were raised at the pre-appointment hearing about the transparency of what had occurred. I do not take a view as to who should make the appointment—that is not for me; but it would be helpful if as much transparency and openness as possible could be injected into the entire process. For instance, I do not know what information members of the Committee had about the process—whether you had seen the original written applications, the outcomes of interviews, the outcomes of media tests and all the other things that had taken place during it. The Committee expressed concerns about the transparency of the whole process. If there were some way of injecting more transparency, that could enhance public confidence in it.

**Dame Glenys Stacey:** As it happens, this is not the only appointment I have had that was subject to a pre-appointment hearing, so I have had other experience of that. Personally, I welcome it. If you are appointed to a position of this sort, where a level of independence is absolutely at the heart of it, obviously the relevant Secretary of State needs to have some confidence in the individual, but equally so does Parliament. It seems to me entirely proper that, before we are appointed, you get a chance to see the whites of our eyes and to take a view as to whether we are sufficiently trustworthy to take these jobs. I see that as a really valuable addition to the process.

**Q30 Alberto Costa:** In your opinion, what are potential weaknesses of the process? Mr Clarke identified a number.

**Dame Glenys Stacey:** I suppose that it depends on who in the Committee is available on any one day. One would hope to have a full Committee, so that everyone gets their chance to ask what they wish. Of course, it is not always possible to time it in that way, so it is unfortunate if you do not get sufficiently good attendance at the Committee. From a candidate’s perspective, we have no idea what you are going to ask. If something unexpected comes up, it can mean that the time is spent on that, at the cost of other things that you might wish to explore, but those are small things compared with the benefit of it.

**Kevin McGinty:** I agree with what Peter and Glenys have said so far. The process by which you become a preferred candidate is an open and fair one, but it lacks transparency, because it is carried out behind closed doors. Therefore, there is a very important role for the pre-appointment hearing, to test that individual in public. From my point of view, having come to this straight from being a civil servant, it does no harm to such an applicant to have a hearing that impresses on the individual the fact that the role they are

about to take on is a very different one, where the public need to have confidence in them. Being tested by parliamentarians is not a bad way of doing that.

In terms of weaknesses, I would never suggest that the candidate needs to know what questions they are going to be asked, but it would help if we knew what the Committee was actually trying to test. I am not sure that that is always terribly clear. It was not clear for me.

**Q31 Alberto Costa:** Mr Newcomen, do you have any comments to make?

**Nigel Newcomen:** It is somewhat ancient history in my case, as it was five years ago. I was scared then, and subsequent appearances have been no less scary. It has been very beneficial in terms of flagging up the independence of the role and reminding the MOJ, on occasion, that there is a slightly different postholder involved and that the relationship ought to be fairly carefully thought through, or indeed that there may be a response from the Justice Select Committee. I have always found it very supportive to be able to say subsequently that you cited some particular point, from the start of my appointment right through the other appearances that I have made here. I am actually grateful to the Justice Select Committee.

**Q32 Alberto Costa:** The previous chief inspector of prisons had a stand-off with Ministers over their wish to appraise the chief inspector's performance annually. What appraisal arrangements does each of you have in place? Are you satisfied with them? Should this Committee play any part in the appraisal process?

**Kevin McGinty:** As I said, the Attorney General's Office is a much smaller office, so it is easy to maintain contact with it. I have regular meetings with the Attorney General and with senior staff in the Attorney General's Office. They also superintend the two departments that I inspect: the CPS and the SFO. I know that both the CPS and the SFO comment to the Attorney and senior staff on what they think about what I am doing. What I have proposed in the protocol is to try to formalise that a little, so that at least once a year a process is gone through whereby the director general of the AGO seeks comments from those I inspect and other stakeholders, with the result that I then have a conversation with either the Attorney or the director general as to my performance over that year.

The whole point of a performance appraisal is not just to improve the conduct of the individual concerned but to give that individual an opportunity to get guidance from the people they are being appraised by. I think it is quite a useful process, but we are not civil servants, so the normal appraisal process, which results in pay, disciplinary proceedings or whatever, does not normally apply. One has to be careful to ensure that one's independence is not impacted by the appraisal process, but I for one see no difficulty in having a full and frank discussion with either the director general or the Attorney General about my performance.

**Dame Glenys Stacey:** My appraisal arrangements are not quite settled yet. Shortly after I arrived, it was suggested to me that I would be appraised by a director general. I responded to that very quickly by saying that I did not think that it would be appropriate. It is tricky, because your average civil service appraisal—indeed, any appraisal

arrangement—tends to look at your performance against a set of objectives. Of course, that is not the relationship. Like it or not, we have quite a lot of inherent authority to do our jobs and to prioritise our work, having consulted with others. That is what we do.

It is difficult to find an appraisal that is a good enough fit for that. I went back to how my chair at Ofqual was appraised, as it is not dissimilar. There, it was an annual chat between her and the permanent secretary about how things were going. Although that sounds loose, it is not bad. You can get a sense of whether, from Ministers' or the Department's perspectives, you are delivering well enough as an organisation, but of course no one but you really knows how you are doing it. At the moment, I am waiting to hear what the arrangements might be, but I am pretty clear that it is not your average appraisal.

As to how the Select Committee plays into that, I would be curious to see whether you had any specific suggestions to make to Ministers or the Ministry of Justice about it. I imagine that Ministers periodically take soundings, and they would look to you.

**Peter Clarke:** I agree with much of what Glenys said. There is no arrangement for my appraisal at the moment. I am looking to have something built into the protocol. I entirely agree that the normal civil service appraisal process is not appropriate, because of the positions we hold and our independence. Actually, who is in a position to be able to fill in all the boxes about your day-to-day performance?

I am very happy, however, to be identified with the performance of the inspectorate. The permanent secretary has to account to the Secretary of State for the use of the budget and for the performance of the inspectorate against our strategic plan. To that extent, the permanent secretary has a role in appraising the inspectorate. Her Majesty's inspector of constabulary is appraised—I do not know in exactly what form; I suspect it is in the form of a letter—by the permanent secretary to the Home Office. I would probably be comfortable with something similar, if it was about reflecting the performance of the department. I would not want somebody I did not meet and report to on a regular basis judging how I chair meetings, write reports or deal with other stakeholders. It is something that I am looking to build into the protocol, but the precise form is yet to be defined.

**Nigel Newcomen:** After five years, my process is also still waiting to be defined. It has not been a particularly substantive issue to me. My memorandum of appointment makes it clear that I will not be personally appraised, but my business plan and performance will, which is entirely fair and appropriate. I am not fully aware that I have been so appraised in any detail in my five years. I have been very happy to raise the challenges, the pressures and, indeed, the successes—a few of them—where they have occurred, but I am not sure that the processes have any great solidity at the moment.

**Q33 Mr Hanson:** Can we look at the new proposals for reformed prisons? Focusing initially on Mr Clarke, what discussions have you had with the Ministry of Justice with regard to the inspection regime for the new prisons from 1 July?

**Peter Clarke:** Quite a few. We are in constant discussion with the Bill team about what inspection might look like in the future. We have had some very helpful discussions, where the issue of the distinction between regulation and inspection has been made

absolutely clear. That is understood. There is a very clear understanding that we are not judging policy and we are not regulating, but that we are judging against international human rights standards, and developing standards. The reform proposals are still developing, of course.

**Q34 Mr Hanson:** We have six prisons from 1 July.

*Peter Clarke:* We have six prisons from 1 July. I was asked whether we should consider an early inspection of them. I said I did not think that was appropriate: first, because some of them had only recently been inspected, and, secondly, because our experience is that if you inspect early after the opening of a new prison you can very easily get false positives or false negatives. The running of a new jail needs to settle down before we can get good, objective, very clear findings. I also did not want an early inspection of those prisons to be used, potentially, as a baseline for judging their success or failure in the future.

**Q35 Mr Hanson:** On that point, I am genuinely interested as to what the baseline is, from 1 July, and who has established what the criteria for success are. We have the six prisons and the potential Bill, but when we asked Ministers about the baseline a few months back, it was still—with due respect to them—very woolly.

*Peter Clarke:* There is still a lot of opaqueness around that. What I did not want was the inspectorate to become the body that set a baseline. I do not think that is our role. Our role is to inspect the outcomes for the prisoners held in those prisons. Obviously we have data from previous inspections, so in due course we will be able to say whether the outcomes have gone up or down, but I did not want to be involved in setting a baseline at the beginning of a reform process. Clearly, those prisons will be very generously resourced to ensure that they get off to the best possible start. I did not want to be involved in the process, potentially, of validating something that may or may not—

**Q36 Mr Hanson:** In your view, who is responsible for the performance of a prison?

*Peter Clarke:* The performance of a prison clearly sits with the line management, through the governor, the deputy directors of custody and NOMS.

**Q37 Mr Hanson:** Under the new reform structure, what role does the Ministry of Justice have in being accountable for the performance of the prison?

*Peter Clarke:* That depends on the nature of the relationship—whether it will evolve or not—between the Ministry of Justice and NOMS. Clearly, policy and line management are responsible for setting the standards and what you want to achieve.

**Q38 Mr Hanson:** Are you clear in your own mind now, as the inspector of prisons, what the role of the prison governor is in the reform prisons—what their responsibilities are, how they will be judged, what outcomes are expected, what responsibilities they have in achieving those outcomes and what their scope of influence is in relation to the performance of their prison?

*Peter Clarke:* It is still evolving. There is not yet complete clarity as to what autonomy actually means. We need to understand whether it will be a devolved or a dispersed

arrangement. There will certainly be an impact for the inspectorate. If autonomy means that governors have to have a wider range of skills—for instance, in commercial procurement, HR, healthcare and so on—we need to make sure that we are able to inspect against those policies, to determine what the impact on outcomes for prisoners is. It is still evolving.

**Q39 Mr Hanson:** Mr Newcomen, do you have a view on any of the particular points that we have discussed with Mr Clarke?

**Nigel Newcomen:** I entirely endorse the point that it is still evolving, with regard to the regulatory structures, the nature of the autonomy that is being devolved, the nature of the resource that is being devolved and how that accountability will be measured. I have a particular perspective. A slight concern is dealing with complaints, for example. I turn to policy—national policy, generally—as the touchstone as to whether a complaint is valid, and is or is not to be upheld. The more you have disaggregation of national policy into lots of local policies in the 140 prison contexts, there is the risk of greater disparity. There is a burning need for a set of minimum standards. That will obviously impact on the inspectorate, but it will also impact on bodies like mine, which are trying to seek an understanding of this.

**Q40 Mr Hanson:** It is particularly important in your case, because you are dealing with situations where things go wrong or there are complaints.

**Nigel Newcomen:** Indeed. To tell that something has gone wrong, you need to have some statement of what is right. If you have lots of local policies and not a single national policy, as we have at the moment, there is much more risk of disparity and, potentially, unfairness between jails. There is a lot of thinking still to be done.

**Q41 Mr Hanson:** In preparation not just for the six that are operational from 1 July, but also for the potential Bill that has been trailed for wider freedoms, what input are you both having into the relationship between minimum standards, inspection, rules and accountability? What is your input to the MOJ currently?

**Nigel Newcomen:** Very little. I have attended one seminar on regulation. There is discussion now of a meeting—sponsored externally, I think by the Prison Reform Trust—to try to work through what a code of minimum standards might look like.

**Q42 Mr Hanson:** I just want to confirm this. You said that there has been very little involvement so far between your ombudsman role and the Ministry of Justice with regard to the performance of the current six and the future Bill.

**Nigel Newcomen:** Indeed. My role with regard to deaths in custody and with regard to complaints continues as is, rather than being reformulated because of the changed arrangements.

**Q43 Mr Hanson:** Mr Clarke, is your experience similar?

**Peter Clarke:** Yes. The bulk of my discussions, and my inspectorate's discussions, with the Bill team at the moment are about the future of scrutiny, not about the policies for reform prisons.

**Q44 Victoria Prentis:** Mr Hanson has asked about many things that I too would like an answer on—as, I am sure, would the wider Committee. Mr Clarke, aren't you worried about this? These things are becoming up and running. Are you concerned that you have not had sufficient input at this point?

**Peter Clarke:** With respect, I do not think that it is for me to say what the management structure of prisons should be.

**Q45 Victoria Prentis:** No, but it is your job to inspect how well that is happening.

**Peter Clarke:** Absolutely. That is what we will continue to do. We have our set of standards. It is not for us to set the standards these prisons will run to during their day-to-day management.

**Q46 Victoria Prentis:** Our concern is that, at the moment, you do not appear to be sufficiently sighted on the roles that governors are now going to have to perform in these prisons, such as commercial procurement, in order to be able to inspect fully whether or not they are carrying out those roles properly.

**Peter Clarke:** It is precisely because there will be a new set of roles that we are engaging with the team. We are reviewing the expectations against which we inspect. Those are the standards we use, and those expectations have to reflect clearly in some way the new arrangements, but they will not judge the arrangements per se; they will judge the impact on prisoners.

**Q47 Victoria Prentis:** Absolutely. We understand that. We are just concerned that sufficient preparatory work has perhaps not been done.

**Peter Clarke:** That work is under way, but it is still very much an evolving picture. One thing we are very focused on at the moment is that traditionally we have not looked in great depth at the leadership and management of prisons. Given the new arrangements, that may well be something we will have to look at, because clearly it can have a huge impact on outcomes for prisoners, particularly if the leadership and management roles are changing, developing and becoming more important.

**Q48 Victoria Prentis:** Do you have a timetable, going forward, for when you will change your procedures in order to reflect the new reality?

**Peter Clarke:** We started what we call our development project a month or so ago. It will run for at least the next year or so. We are starting with the review of our expectations on adult male prisons. It will be an iterative process.

**Q49 Victoria Prentis:** I wonder whether it would be proper for us to ask whether you could keep us regularly updated on progress.

**Peter Clarke:** Yes, of course.

**Victoria Prentis:** Because we have concerns about the way you are going to operate going forward.

**Q50 Chair:** Do you think that you should be involved? You probably should not be involved in setting policy, because you have to be independent.

**Peter Clarke:** That is precisely the point. We should not be.

**Q51 Chair:** It is about getting that balance.

**Peter Clarke:** Exactly. That is the point we have made repeatedly to the Bill team.

**Chair:** Absolutely.

**Q52 Mr Hanson:** But it is important that we understand what the baselines are, what the method of operation of your inspection is and, ultimately, who is accountable for the things that have gone well or badly. Crucially, in both your roles, that is central to what you are trying to achieve.

**Peter Clarke:** Yes. I can say pretty clearly that the basic methodology—the standards against which we inspect—will not change; but our expectations, in terms of interpretation of those international human rights standards, will probably develop to reflect changes in the broader prison environment, not only leadership and management, but things such as the increasing age of the prison population and the increasing issues around mental health within the prison population. Those are the things that need to be reflected in our expectations and that we will look to capture as we revise the way in which we look at prisons.

**Q53 Mr Hanson:** Dame Glenys, from your perspective, does the existing reform programme of six, and the future reform programme, have any impact on work in probation?

**Dame Glenys Stacey:** It does. Before I answer, can I reflect on the conversation that we are having? In my organisation, we have had to adopt our inspection programme and develop our methodologies in response to transforming rehabilitation. In a way, perhaps we are a bit further along in responding as an inspectorate to a very significant change in what we are inspecting.

All inspectorates in that position have to consider whether their basic methodology is still fit for what they are trying to inspect. In our case, we have made some amendments to it. It is still very much based on independent, individual case review, but we are asking questions about leadership and management, for example, and looking at how contract incentives affect behaviours and so on. We have reviewed our methodology. It stands, more or less, but we have made some changes to it, looking at enablers and barriers to achieving effective outcomes. That is what you would expect of an inspectorate. As what you are inspecting changes, your methodology has to adjust, sometimes quite noticeably, in order to get the best results for it. I suspect that that is the process Peter is at the start of now.

Of course, once you put in a new methodology, as we did on 1 April, you need to review it pretty quickly to make sure that it is delivering. You may hone and tweak it a bit in six or nine months' time, when you have sufficient experience of it running. It is the inspectorates' job to do that—to see how things are now being delivered, what is expected of them and how we can best get a grip and a good view of it. That is our job.

**Q54 Mr Hanson:** On all three points, the Committee—if I can speak for the Committee on this—would welcome, at some point further downstream, a thematic discussion of how that inspection will work in practice. Co-operation between us on that would be very helpful.

**Dame Glenys Stacey:** Okay. To answer your specific question about how it is affecting HMI Probation, we have just finished a consultation, in which we made a number of proposals. One of them is to change the balance of inspection in a rather traditional inspection, called POMI—prison offender management inspection—where we play a part, alongside HMI Prisons, in looking at offender management. We are suggesting that we reduce our commitment to that, to some extent at least, and that we focus it on certain prisons only. That is a discussion we are having.

In return, we would make a bigger investment in through-the-gate inspection—really looking at how probation services are working through the gate. We are adopting a more thematic-based approach to that. Our hope is that we develop that methodology, so that we are looking at through the gate—a flagship policy of Government—in order to support rehabilitation and therefore, hopefully, to do something to reduce the rate of reoffending. We are changing the balance of our inspections to reflect Government policy developments.

**Q55 Marie Rimmer:** I would like to focus on plans for joint working and the scope for greater co-operation between the prisons and probation ombudsman and the prisons inspectorate. Mr McGinty, the criminal justice inspectorates joint inspection business plan for the year 2016-17 was published last Monday. You are in the lead on inspection work on disclosure. Could you say a little more about what the inspection hopes to achieve?

**Kevin McGinty:** Disclosure is a subject that any practitioner in the criminal courts will know has been an ongoing problem for many years. For some years, we meant to carry out a joint inspection on disclosure, but something always cropped up that caused us to put it off for a while. There have been a number of guidelines issued, starting with an internal set of guidelines that the CPS came up with some years ago, following the collapse of the case of Lynette White in Cardiff. Those dealt with how disclosure is handled in complex cases. Then we had a redraft of the Attorney General's guidelines on disclosure. Most recently, there was the Gross review of disclosure in criminal cases. On each of those occasions, we put off an inspection on disclosure to see how the rules settled in.

There continue to be cases that go wrong. In the last year or so, the Court of Appeal has had three cases where it has been deeply critical of how the disclosure process worked. We thought that it was now time to carry out an inspection. There were a number of choices that we had to make as to the level we wanted to pitch it at. On a risk model, we have decided to inspect serious cases in the Crown court, but not the most complex ones; we will not look at fraud cases, which have their own problems, or terrorism cases, which

tend not to have difficulties with disclosure—they have difficulties, but of a different kind. We will concentrate on cases such as rape cases and, in particular, historical sexual abuse cases.

The challenge is that the disclosure system itself is quite straightforward. The rules are quite straightforward. Essentially, you have to disclose to the defence material that might either undermine the prosecution case or assist the defence case. That is quite a simple prospect; it is carrying it out that causes the difficulties. One of the huge difficulties, of course, is the amount of unused material that may exist in a case. The challenge for this inspection will be to establish what we are looking to achieve. Are we trying to identify what the problems are, when we have a fairly good idea of that? Are we going to make any recommendations that will assist, when there have been so many guidelines in the past as to what may happen? I think that it will be useful in trying to work out what is happening on the ground. There is an awful lot of anecdotal detail about what is happening. Whenever I speak to a Crown court judge who sits anywhere and they find out what my job is, I get a long explanation about how disclosure is simply not working in the Crown court. This inspection will help us to try to work out exactly how big a problem it is and whether there is anything we can do to assist with addressing some of the difficulties.

**Q56 Marie Rimmer:** You do not really have any plans for what you are going to do to achieve that.

**Kevin McGinty:** We have a methodology worked out.

**Q57 Marie Rimmer:** A methodology?

**Kevin McGinty:** Yes, clearly. It will involve looking at quite a large number of cases. Until you have found out what actually happened in a case, you cannot make any recommendations about what is happening or what you can do to improve matters. The methodology will involve a large number of cases being looked at carefully by my inspectors and by inspectors from HMIC. We need to ensure that what the police are providing to the CPS is up to standard and they are carrying out the role that they are supposed to be carrying out, and that the CPS is doing what it is supposed to be doing.

**Q58 Alex Chalk:** Purely anecdotally, people comment that one of the things that is going wrong is that, when a huge amount of material is seized in the course of an investigation, it does not necessarily make its way on to the schedule of unused material. How do you plan to go hunting for things that have not been recorded? If you do not know about their existence, you cannot measure whether they should have been recorded.

**Kevin McGinty:** We have access to an awful lot of material, as you can imagine. I am perfectly happy at some stage to share with the Committee the methodology that we use, to give you a better idea of how we do it. Essentially, we have access to all the material that the police and the CPS have. We are normally able to determine whether or not things have or have not got on to the schedule. We can ask questions of police officers. We tend to look at cases that have already gone through, and where there have been problems, to

try to work them out. We cannot spot every single mistake that has ever been made in a case, but we try to identify them.

**Q59 Alex Chalk:** Do you feel that you will have sufficient access to be able to go through the drawers and say, “Look, there is something in this investigation that ought to have been listed on the schedule of unused material, so that the prosecutor, and, indeed, the defence, could make a decision about its value”?

**Kevin McGinty:** If there is no record at all of the material having been taken into the custody of the police, it will be quite difficult to do that.

**Q60 Alex Chalk:** Unless you are allowed to go through the drawers.

**Kevin McGinty:** As a practitioner, you will know that sometimes there are indications later in the process that suggest that something has been in the possession of the police, or should have been in their possession, which would allow us to check.

**Q61 Marie Rimmer:** Dame Glenys, can you explain what your through-the-gate work with Her Majesty’s inspectorate of prisons this year will involve?

**Dame Glenys Stacey:** Of course. We did some pilot work late last year, to see how we wished to shape inspection. We have built on that work. We will review specific cases, both in custody and after release. It will be a two-stage affair so that we can see whether through-the-gate interventions have been identified and planned while the individual is detained in custody, and whether they have been followed through on release, to promote desistance from offending.

We are focusing in the first instance on short-term prisoners in local prisons. That cohort of prisoners has the highest likelihood of reoffending and fared worst in our pilot work, so we are particularly interested in them. We are visiting four prisons: HMP Preston, Wandsworth, New Hall and Birmingham. We wanted to include New Hall so that we could look at a women’s prison, given the particular needs of women in relation to resettlement. It is case review-based, but we are in those prisons, we are interviewing the staff who undertake through-the-gate work on behalf of CRCs and then following the prisoners through. This time we expect to report in a phased way. Rather than waiting until the conclusion of the whole thing, we will report in late summer or in the autumn on what we have found in the first phase—the work that is being done while the individuals are still detained in custody.

**Q62 Marie Rimmer:** Mr Newcomen, what further scope is there for the ombudsman to co-operate with the criminal justice inspectorates? How could HM inspectorate of prisons and independent monitoring boards better follow up on implementation of the recommendations you make as a result of fatal incident investigations and complaints?

**Nigel Newcomen:** That is absolutely essential at a time of scarce resources and given the fact, which I have alluded to, that over the last five years I have been frustrated about the lack of traction that some of my recommendations have been able to make. I should say that 99% of my recommendations are accepted. All the fatal incident recommendations

come with an action plan as to what is going to happen, so it is doubly frustrating when you get promises of action that do not necessarily come to fruition.

Clearly, I do not have the resource to follow up myself—I hardly have the resource to investigate all the burdens of deaths and complaints that I have at the moment—so it has been absolutely essential to work jointly and closely with colleague chief inspectors. I was deputy chief inspector of prisons for some years. Early in my tenure, it was incumbent upon me to undertake a protocol with Peter’s predecessor that ensured that all fatal incident recommendations are followed up by the chief inspector, so there is independent assurance as to whether or not there has been progress. Peter often tells me that there has not been as much progress as he and I would have liked.

The only difficulty with that process is that a death in custody can happen in one year, but Peter may not be returning for four or five years. In February, I put in place a protocol with the IMBs—the independent monitoring boards—so that, hopefully, they can follow up on a slightly more regular basis, to give some further independent assurance as to whether progress has happened in their particular prisons on the recommendations that I have made. Indeed, I have even started to make overtures to Glenys, to see whether there is some joint work that we can do when there are deaths in probation-approved premises.

I have a very strong commitment to joint work, born of the frustration of having some idea of what changes and improvements should be achieved and of their frequently not being achieved. The independent scrutiny bodies have to work together to try to push as far as they can, or to work out what is inhibiting progress. We cannot go on with a situation where perfectly appropriate recommendations are made and accepted, but then I find that they are not implemented and I have to go back and say the same thing again, in another death in custody investigation. It is very important stuff.

**Q63 Marie Rimmer:** Mr Clarke, would you like to comment?

**Peter Clarke:** Yes. I entirely agree with that. Already, in the five months that I have been in this post, I have seen several examples where Nigel’s recommendations have been accepted but not acted on. In prisons where self-inflicted deaths are occurring, it is utterly appalling that that is happening. It goes directly to Mr Chalk’s earlier point about whether there should be a requirement to respond. Then there is another layer of accountability built in. It has been said many times over the years that the only power of the inspectorate is its voice. Perhaps there needs to be something to supplement that voice.

**Chair:** That is very helpful.

**Q64 Dr Huq:** These questions are for Peter Clarke. Your May 2016 strategic objectives document, which partly came out of a recommendation by this Committee when we interviewed you all those months ago, says that you will review your expectations—the criteria against which you inspect detention facilities—in the light of prison reform. Last week, you announced a development plan to carry out the review, including a consultation to take place early in 2017. Why do you think that such a review is necessary?

**Peter Clarke:** There are a number of things playing into this. First, as I have already said, our expectations are based on international human rights standards. They were last

reviewed early in 2012. Those standards have moved on, so we need to make sure that we reflect any changes in them. They are constantly developing; for instance, last year the Mandela rules were adopted by the United Nations General Assembly. We need to reflect and to see what we might need to change in order to make sure that we are compliant with the requirements placed upon the United Kingdom by those international rules.

I have already mentioned that there are changes in prisons that we need to reflect. There is the increasing age of the prison population. By way of example, recently I was in Stafford prison, where, of the 740 prisoners, 70 were aged over 70 and 100 were aged over 60. There is a real need to make sure that there is provision for people of that age within the prison. Indeed, that is a requirement in the Mandela rules, which we need to look at very carefully.

I have already mentioned that we need to make sure that we are in a position to be able to report in an authoritative way upon the impact of the reform programme, as and when it is appropriate to inspect against the reform prisons. Of course, there is a whole raft of reviews going on at the moment. Dame Sally Coates has carried out a review of education in detention. There is Charlie Taylor's review of the youth justice system. There is the Acheson review of radicalisation in prison. David Lammy is carrying out a review of disproportion across the whole criminal justice system. We need to take account of all those reviews and to make sure that our expectations are geared to being able to reflect whatever emerges, eventually, from their implementation.

**Q65 Dr Huq:** In addition to the four core themes that were in the inspectorate's previous corporate plan, there is now a new fifth one of being a collaborative inspectorate. Can you tell us a bit more about what that means and why you added it?

**Peter Clarke:** Certainly. The first point is that being collaborative does not mean or imply any compromise whatsoever on independence. What it projects, I hope, is the fact that I am determined to increase the impact of the inspectorate. We have been encouraged to do so by the NAO, for instance, and by this Committee.

How do we increase impact? I am firmly of the belief that one way of increasing impact is by collaboration with a wide range of stakeholders. We already do quite a lot, but I would like to do more. For instance, it is our role, as HMI Prisons, to co-ordinate the national preventive mechanism in this country. That involves co-ordinating the activities of the 20 members of the UK national preventive mechanism and making sure that we have appropriate business plans, joint working and so on. I am working very closely with the youth custody improvement board, which has been set up by the Ministry of Justice to try to learn the lessons from the Medway occurrences and to make sure that they are not replicated across the country. I am very keen that we should both contribute to and learn from that process, so that that, too, can be reflected in the way in which we inspect—what we look for and our expectations.

The joint group that has already been referred to—the criminal justice chief inspectors group—is another example of collaboration. I have mentioned working with the Bill team. We collaborate with a huge range of stakeholders, in Government, NGOs and elsewhere. All of that should be reflected in our strategy.

**Q66 Victoria Prentis:** You have dealt with most of my points, Mr Clarke, but I would like to raise one issue. Would you like the national preventive mechanism, under the optional protocol to the convention against torture, to be included in the new prison and courts reform Bill, so that it is on a statutory footing?

**Peter Clarke:** Personally, I think that would be very useful. If we are not unique, we are virtually unique among the 64 NPMs around the world—

**Victoria Prentis:** In not having enacted it.

**Peter Clarke:** In not having it recognised in legislation. Even if it was a passing reference, in the sense that the inspectorate must have regard to it—

**Q67 Victoria Prentis:** Presumably you do have regard to it.

**Peter Clarke:** We do. Absolutely. But having it on a statutory basis would give clarity to the fact that we are independent. As far as I am aware, nowhere in legislation does the word “independent” appear in respect of the inspectorate. In fact, the inspectorate does not exist in law. I exist, but the inspectorate does not. There are two limbs to this. It would be helpful for the inspectorate to be recognised in law, but it would also be a huge step forward to recognise the national preventive mechanism and the obligations that the United Kingdom has, through its treaty commitments, in that respect. I hope that would cement the fact of our independence once and for all.

**Q68 Victoria Prentis:** I said that I did not have much to ask, but that was a very helpful answer. Is there anything else that you think it would be helpful to include in the new Bill, along those lines?

**Peter Clarke:** I hope that implicit in independence would be our ability to operate in an independent way, but it is not explicit at the moment that we have powers of entry and to look at documents. Maybe it would be helpful to have that set out explicitly. My fellow inspectors have powers set out explicitly in legislation. I cannot see any reason why we should not. At the moment, we operate to a set of memoranda of understanding, which work. We have occasional difficulties, where somebody locally does not understand, but pretty soon they do. Maybe it would be helpful to have that set out explicitly.

**Chair:** That is very helpful. Back to you, Ms Rimmer.

**Q69 Marie Rimmer:** Dame Glenys, could I focus on the probation inspectorate? In our report following our pre-appointment scrutiny hearings with you and Mr Clarke, we recommended that you should bring forward a strategy for the inspectorate during your period of tenure as chief inspector. Will the three-year plan that you say in your written submission you intend to publish in July or August form that strategy?

**Dame Glenys Stacey:** A strategy is made up of a very clear and candid understanding of how things stand and some guiding principles—independence being one, but there are others—about how you then plan. The real crunch of a strategy is the plan. A strategy is not just a lot of visions, missions, aspirational goals and effusive management-speak; it is

what you are actually going to do to deliver something over the next three years. That is exactly what our plan will be.

You will know that, in order to get to that plan, we have been consulting. The consultation ended at the back end of June, and we now have a draft plan. Of course, the staff of an inspectorate are out inspecting all the time, so they very rarely get together. In my organisation we get together as a group once every three months. As it happens, that will happen next week. It is important to me that we have the opportunity to talk together about our plans, having run the consultation, before we endorse our draft corporate plan. We shall do that next week and we shall be ready to publish shortly afterwards.

**Q70 Marie Rimmer:** The transforming rehabilitation landscape has now been in place for more than 15 months. What is your assessment of the main issues that need to be addressed by the National Probation Service and community rehabilitation companies?

**Dame Glenys Stacey:** You will know that recently, towards the end of May, we produced the last of a series of reports on transforming rehabilitation, “Transforming Rehabilitation 5”—a catchy title. I hope that you get the chance to read at least the foreword and the executive summary, because the position is pretty well set out there. Recently, I also wrote a submission to the Public Accounts Committee, which is looking at transforming rehabilitation as well. Hopefully, I have summed up there what our take on things is at the moment.

If I can summarise the main issues for you, we are definitely seeing a mixed picture. Generally, NPS is performing better than CRCs, but it has had much less by way of change to cope with. There are some persistent rubbing points. Of course, the changes have produced a fault line between the NPS and CRCs. It is just there, as part of the design. Trying to manage seamlessly across that fault line takes persistent effort on both sides. We see that as particularly difficult when we look at court work—the quality and consistency of court reporting, for example. We really need to see improvements in that. We quite understand that the NPS is making every effort to improve matters, but there are risks if reports are not sufficiently consistent, coherent and comprehensive, in the sense that all the right checks are being done.

We see some issues with morale, although it is mixed. Because of the staff changes that have happened and are happening, there are some shortfalls in the training that is being provided. A good number of new people are having to learn new skills. There is a big onus, particularly on CRCs, to get that right.

**Q71 Marie Rimmer:** How are you planning to take forward inspection work on probation services for adult offenders?

**Dame Glenys Stacey:** Recently, we have developed and changed our methodology on adult offenders. In days gone by, we had a fairly standard methodology. We ran an inspection programme that went round each of the probation trusts over a number of years. We have now developed our methodology. It is still based fundamentally on the assessment of cases—making sure that we can see from the case record and through interviews with staff who have been responsible for cases exactly what has happened. We

can open and fillet that, like a fish, to see what has happened and then, hopefully, put it back together. Having done that case assessment, we also follow through the lines of inquiry that come from it. If, for example, it suggested that there was a difficulty in a particular location or hub of a CRC, we would be out the following week with an inspection of that hub, to follow that through. If it suggested that an individual was not sufficiently trained, we would chase that up through the management chain. We have a traditional approach but with a bit of a modern twist. We are taking the lines of inquiry that come and following them through in a second week of inspection.

**Q72 Marie Rimmer:** You say in your written submission that “measures of the effectiveness of rehabilitation and changes in reoffending rates are far off,” which we know. When can we expect to see assessments, from you or from others, of the effectiveness of transforming rehabilitation against the main yardstick against which the reforms will be judged—reducing reoffending?

**Dame Glenys Stacey:** My understanding is that Government will produce some interim figures in October 2016, but the first true set of figures will be in October 2017. You may think it rather presumptuous to judge such a large programme simply on one year’s set of figures anyway, so you have a little time to wait. That is one of the reasons why we are moving to a greater proportion of thematic inspection. It seems to us that thematic inspection can tell the world at large something about, for example, how a flagship programme like through the gate is working. We will have our first report on that in late summer or in the autumn. You get a more timely snapshot as to how things are playing out on the ground.

Equally, this year we will do that for what we call RAR days—rehabilitation activity requirements—which are a big component of community sentencing. The court may specify up to 25 days of rehabilitation activity, but the real question is: how effective is that activity? A CRC can report X number of RAR days delivered, but the point is, what? We will do a thematic study of rehabilitation activity requirements and we will be able to show how that is happening on the ground. While we are waiting for longer-term measures of outcomes, which are so important, we can look at things that if done well contribute to good outcomes, and see whether they are being done well.

**Q73 Marie Rimmer:** How confident are you that the expected additional £2.7 million core funding from 2017-18 to enable you to review serious further offences committed while on probation will prove adequate?

**Dame Glenys Stacey:** That is a classic proof of the pudding in the eating, isn’t it? We have not simply taken what it might cost at the moment and said, “We can do it for that.” Instead, we started with a plain sheet and said, “If we were doing this work, this is how we think we would like to do it, this is how it could best be done, and this is what it will cost.” We presented that to Government. We asked for £2.8 million and got £2.7 million, which is probably success, but, as I said, the proof of the pudding will be in the eating. We are designing a process where we are making what we think are sensible estimates of the manpower requirements. We are not over-egging it, but we are not shaving it, either. It is our best estimate.

**Q74 Marie Rimmer:** To what extent, if any, has the extension of probation supervision to short-sentence prisoners affected the inspectorate's workload, as opposed to the workload of probation providers?

**Dame Glenys Stacey:** That is an interesting question. It does not necessarily mean that we do more inspections, does it? It means that, when we are out on inspection, we are looking at a slightly different cadre of individuals who have been subject to probation services. We have a particular interest in short-sentence offenders, because probation services play a significant part in relation to those offenders. As you know, we have targeted them, particularly in our through-the-gate inspection.

**Q75 Alex Chalk:** I have some questions for you, Mr McGinty. In your covering letter to the Committee on "Delivering justice in a digital age", you said that, although incremental progress had been made on digitising court services, there was still some progress to be made. About £700 million of public money is being invested in this. How confident can you be that this modernisation will succeed where others have failed in the past?

**Kevin McGinty:** I don't think there is any choice.

**Alex Chalk:** There may not be a choice, but—

**Kevin McGinty:** That has been one of the drivers of why it is working this time, unlike attempts in the past. It is the same for transforming summary justice. The CPS and the other agencies realise that it can continue only if they make a success of this.

As far as digitisation is concerned, they have made real progress in the magistrates court, and, with the digital case system, they are beginning to make real progress in the Crown court, too. Of course, there are challenges and difficulties. One of the criticisms that some of my inspectors made when they looked at what was happening in the magistrates court was that an opportunity had been missed, because they were trying to digitise a paper system. My view on that is that Whitehall has been full of over-ambitious projects that try to do everything in one go, which never works. That involves a huge waste of money at the end of the day, because they try to achieve too much.

With digitisation, they have achieved a great deal. For instance, virtually all magistrates court work is now digital. No advocate needs to go into court with anything other than a laptop. The magistrates will have the same information as the advocate has. There are other advantages; because the files are now digital, Crown Prosecution Service areas that are more pressed or are finding it more difficult to use staff can have their cases looked at by CPS staff in different areas. For instance, the south-east regularly has work done for it by lawyers and admin staff in the north-east. Because there is a digital system, that can be achieved. There are some real landmarks. It seems to be going reasonably well.

**Q76 Chair:** Do you find that it is working consistently in magistrates courts?

**Kevin McGinty:** There will always be difficulties.

**Q77 Chair:** A magistrate who asks, "Can you bring in your own laptop when you come in to sit next?" does not inspire me with a great deal of confidence.

**Kevin McGinty:** No. One of the difficulties with the digital case system in the Crown court is that, although the Crown court judiciary are all in the system, magistrates listening to appeals from the Crown court are not. They are outside the system at the moment. It is still work in progress, as you mentioned, but in terms of the indications as to whether it is going the right way, based on the joint inspection we did, it appears that there is real promise.

**Q78 Alex Chalk:** That is encouraging. Can I move to the SFO—the Serious Fraud Office? As you helpfully point out in your covering letter, there is a division between its core funding and blockbuster funding, which is intended for the big cases that come around once in a while. You suggest that that needs to be rebalanced and that the core funding should be increased, with less reliance on blockbuster funding. Can you elaborate on why you propose that?

**Kevin McGinty:** I am not going to criticise blockbuster funding. The report does not do that. It provided an opportunity for the SFO to carry out investigations and prosecutions that otherwise it would never have been able to do. Indeed, the LIBOR investigation that the current director took on, after a contrary decision by the previous director, was as a result of being able to get access to blockbuster funding.

When we carried out our review of governance arrangements within the SFO, certain things became clear. One issue was that there is a certain degree of disruption concern when you start a case on blockbuster funding, because the SFO needs to take some core staff, who form the core of the investigation and prosecution team, from existing cases and then surround them with temporary staff, to give them some sort of core base of experience. Secondly, there is a huge investment in terms of training those individuals. Thirdly, when they finish a case, that experience is lost to the organisation, because they leave the SFO. There are problems caused because temporary staff tend to be paid more than permanent staff. There is also a constant churn of staff.

**Q79 Alex Chalk:** On that point, when they are seeking to ramp up their capacity for a blockbuster case, what kind of staff do they bring in? I know from personal experience that they will have investigators, more disclosure counsel and people like that, but do they bring in lawyers and caseworkers as well?

**Kevin McGinty:** Yes.

**Q80 Alex Chalk:** Right. That is where additional training needs to take place.

**Kevin McGinty:** Yes. Some of the cases have 27 lawyers working on them.

**Q81 Alex Chalk:** Will you be pinned down on how the funding should be divided up? In other words, what percentage increase do you say should be applied to the core funding?

**Kevin McGinty:** That is the very difficult question. That has to be something for the management of the SFO to consider itself. What we tried to do was to say that there are advantages to blockbuster funding, which has served its purpose well, but to issue a warning that there are disadvantages, too. That is why we suggested that the SFO negotiate with AGO on whether there is a better model that they can achieve.

**Q82 Alex Chalk:** Is that shared by the management of the SFO? Do they agree with you?

**Kevin McGinty:** David Green recognises the difficulty. I think he is on record saying that—certainly in the early days—the advantage of blockbuster funding is that he is not left with staff who are not being used. I accept that there is a balance that has to be achieved. I do not think that the SFO could work without some blockbuster funding. The issue is whether or not the balance is right.

**Q83 Alex Chalk:** That is helpful. Before we leave the SFO, are you confident that financial governance and controls at the SFO are now fully robust?

**Kevin McGinty:** There was a huge difference between what we saw when we went there recently and what we had seen in previous inspections. An awful lot of that seemed to be down to David Green himself. One of the recommendations we made was that he was probably taking on too much and was being spread too thinly. We suggested a different corporate arrangement, a management board and an executive board, which would free him up a little. What we saw was promising.

**Q84 Chair:** The letter you wrote to the Committee referred to significant and tangible changes since Mr Green has been in post.

**Kevin McGinty:** Very much so. Morale within the organisation is completely different.

**Alex Chalk:** It is not for me to give evidence, but, anecdotally, I have been told precisely the same thing about morale. Can I go on to the CPS? Can you explain briefly how the new area assurance programme under which you will inspect CPS areas differs from the existing methodology?

**Kevin McGinty:** Yes. What I inherited was a process of area effectiveness inspections, which looked at virtually everything that a particular area was doing. It was enormously resource intensive. As the number of areas moved from 42 or 43—I cannot remember the figure—to 13 or 14, the areas got a lot bigger, the amount of work that you had to do on them took longer and the report was very delayed. By the time we got around to publishing the report, it was three or four months after we had carried out the inspection and the CPS would say, “Yes, you say that in the report, but things have moved on since then.” Being able to do only about two reports a year meant that it took us the best part of six years to get round the entire CPS.

I took a look at what HMIC was doing with PEEL to try to come up with a process—from a resource point of view, it has to be at a much higher level—for looking at what each of the areas was doing in the course of two years. We have tried to develop a methodology that looks at key issues within each area, in a process that will allow us to do five or, probably, six a year.

**Q85 Alex Chalk:** Can you explain that? Is it a thematic approach?

**Kevin McGinty:** No, it is not thematic. It looks at things like case performance, leadership and resource management. There is a set of questions. Having said that, we have done two pilots: one in the south-west, on which we published a report last week, and one in Wales,

which is currently at the consultation stage. Today and yesterday, all my inspectors have been sitting together in a circle to do an evaluation of the process—what we got wrong in the two pilots and how we can improve it. What we discovered was that the process we were going to use—having mandatory questions for all areas, but with optional questions or modules, depending on our risk assessment of a particular area—will probably not work. We will have to ask the same questions for each area, so that we can compare like with like.

**Q86 Alex Chalk:** Yes, otherwise it is apples and pears.

**Kevin McGinty:** If we decide on a risk basis not to ask an area certain questions, that is making a statement of what we think about that area, which also has its dangers. It is very much work in progress. The evaluation is continuing today. I am perfectly happy to share with the Committee what our methodology will be going forward. The purpose of it is to get an overview of the CPS in the course of two years, rather than six.

**Alex Chalk:** That is helpful.

**Q87 Chris Elmore:** My question is linked to the prisons and probation report, Mr Newcomen. The foreword to your business plan for 2016-17 said that you will continue to press the case for your office to be placed on a statutory footing. What kind of statutory provision do you wish to see?

**Nigel Newcomen:** I think I alluded to it in another answer, or sneaked it in. It has been a rather pervasive concern of mine, and one that I am pleased that the Committee has echoed. Indeed, parliamentarians going back over a decade have been echoing the same point. Fundamentally, there are very few ombudsmen I know of who do not operate on some sort of legal basis. I operate in a fairly sensitive, difficult, hidden, closed and secretive environment. Not to have a legal basis to get unfettered access to people, places and documents is a potential impediment. I get round that, ostensibly, by escalating and by being fairly experienced and fairly loud, when needs be, but there is a practical basis for that. A legal statutory footing would reinforce the capacity and capability of the organisation to do what it is supposed to do.

There is also a perceived issue of lack of independence. That is particularly the case in terms of the obligation on the state independently to investigate all deaths in custody. If there is a perception, particularly among bereaved families and those who feel particularly hard done by by the system, that they will not get truthful answers because this appointee of the Secretary of State is not operating on a statutory basis, we do a disservice to those for whom we are trying to expose the issues without fear or favour. There are practical issues, and there are issues supportive of independence. I think it is a weakness of the office.

**Q88 Chris Elmore:** Would a protocol setting out your relationship with the MOJ reduce the need for your position to be given a statutory basis?

**Nigel Newcomen:** That is an interesting point. A review of my terms of reference has been going on since 2012, when I asked for it as an intermediary step between getting a statutory footing and just trying to improve the situation. The tardiness of the Ministry of

Justice is unfortunate. Four years later, I still have no review of the terms of reference of my office. Despite my writing to Ministers and getting fairly sympathetic noises, there has been no further progress yet on the statutory footing. In many ways, I feel ill served on that basis, but, as I will quickly point out to the Committee, despite those structural weaknesses, the office still delivers some very important work. Indeed, it has been doing so in the face of a huge increase in demand. Although I bleat a little about the lack of progress on both terms of reference and, importantly, the issue of statutory footing, we survive none the less.

**Q89 Chris Elmore:** In your submission, you state that, after accepting recommendations that you make, prisons struggle either to deliver or to sustain improvements that they introduce. How does your review of the office's impact improve the situation?

**Nigel Newcomen:** We have touched on some of the aspects. I was appointed, and my office is responsible, for independent investigations of deaths in custody and complaints, and we could stop there. However, when I arrived in office, I changed the mission statement to say that the office should also make a significant contribution to improvements in safety and fairness in custody. I firmly believe that independent scrutineers should support improvement.

I have done everything I can—I set it out in an impact paper, which the Committee has access to—to try to identify the potential impediments to getting the action that I think is being cried out for, in many respects. Some of that relates to issues for me: ensuring that there are timely reports, that the recommendations are smart, clear and well evidenced and that I have invented a body of thematic learning that sets out clear lessons. That said, we still have the obvious point that was raised previously: namely, that there is still a need to say again and again that certain things need to improve and sometimes there is difficulty in getting that improvement. It is not that there is any ill will, as far as I can see. As I said before, 99% of my recommendations are accepted, and I get an action plan in each case, but, as Peter indicated, when he goes back and looks at some of the progress on my recommendations, it can be difficult and limited. The Committee has touched on whether there should be more sticks involved. That is well worth exploring. Lord Harris's review said similar things.

At the end of the day, I just have to keep going at it—as my successor will have to do—to make sure that the recommendations are well evidenced and are directed at improvement. I am doing new things. I run an annual seminar series for operational staff in the Prison Service; I will run another one at the beginning of September. I have done that for three years now. Indeed, the chief executive of the National Offender Management Service is going to turn up for a whole day to support me in running those seminars.

There is good will, but this is a very serious issue, particularly with regard to self-inflicted deaths. We had a 34% increase this year alone, which is shocking. We really need to continue to focus on it. We even had an increase in the number of homicides, with the largest number of homicides—six—in the year. There are a lot of safety issues in our prisons at the moment, which the Committee reported on previously. Until those of us in the scrutiny world who are making recommendations for improvement get a better grip

and a better handle on them, we will continue to suffer this rather poor picture of safety in prisons.

**Q90 Chris Elmore:** I have one final point, around lessons learned. You mention the opening by prison staff of prisoners' rule 39 correspondence. What steps have been taken by prisons to learn and implement lessons from that process?

**Nigel Newcomen:** That is an interesting one. I have made a big thing of thematic reports. When I sat here before you five years ago, I set out my stall and said that I would invent a thematic agenda of publications and I have done so; there have been 30 of them since I took up post. They are thematic reports, though. They are not individual investigations, where I can get an action plan and a specific commitment to get some change. They are what Anne Owers, one of my previous bosses, used to call a slow burner. You set out the tools, the tasks and the learning. It is for others, in the prisons, immigration removal centres and probation settings I operate in, to learn.

There is a limit. I target these thematic documents. There is a communications exercise that targets all the relevant staff who are involved. I do media, as far as the media are interested. Ostensibly, it is for the investigated bodies to learn the thematic lessons. All I can do—using the analogy of taking a horse to the water—is try to be as helpful as possible by producing information that is very robust, very evidence based and well respected in the services that I am investigating, but there is still a difficulty in getting it done.

The rule 39 case is interesting. It is really about following existing procedure and policy. It is not new, radical stuff. It is just, “Do what you’re supposed to be doing.”

**Q91 Chair:** In your business plan, you make the point that the frustrating delay in getting any progress on placing your office on a statutory footing is often put down to the fact that there is not a legislative opportunity for that; there is not a window for it, as any one of us who has been a Minister has been told by civil servants at one point or another. I suppose that the prison and courts reform Bill is a pretty obvious legislative opportunity, if Government were so minded.

**Nigel Newcomen:** Indeed. I have written to Ministers to point that out, but they knew it already. The charitable response—I have had it in terms from some Ministers—is, “You don’t look very lacking in independence to me. You are pretty robust.” My office has been pretty robust, and we do not get any level of interference at the moment. However, this is all a precursor to the problems that could occur. It is about establishing an office that is credible and does not need to say, “Can we please go and see your files? Can we please come into your jail?” We should be allowed to go in straightaway, under our own auspices.

**Q92 Chair:** I suppose that four or five clauses in the Bill would do the trick on that.

**Nigel Newcomen:** Absolutely. It rather depends on what regulatory framework the Government want to put in place.

**Chair:** That is very helpful.

**Q93 Philip Davies:** I have one quick question for you, Mr Clarke. You said at the start that you needed to recruit specialists, that you were finding it very difficult to do so and that, potentially, it was going to lead to an underspend in your budget. I wondered what specialists you needed to recruit and why you were finding it so difficult.

**Peter Clarke:** We do not find difficulty in attracting good quality candidates. The difficulty is in the time it takes to attract them and the danger of losing good candidates, who inevitably will find other opportunities, if they are looking for other jobs. The sorts of specialists we are looking at are healthcare specialists, probation specialists and social care specialists. It is across the whole range of things that we need to inspect; it is not just people with a prison background. In fact, we have comparatively few people with a prison background within the inspectorate.

**Q94 Philip Davies:** Why is it so difficult? Why is the process so slow?

**Peter Clarke:** Because, as I understand it, the MOJ has a shared service human resources facility, some of which is subcontracted. It has certain processes that have to be followed, and they take a considerable time.

**Q95 Chair:** That is very helpful. Thank you all very much for your time and your evidence, which has been extremely helpful, as ever.

Mr Newcomen, this is probably—unforeseen mishaps excepted—the last time that we will have the pleasure of your appearing before us, because you are coming towards the end of your term in office. We look forward to having a pre-appointment scrutiny hearing in September with the preferred candidate to be your successor. I thank you on behalf of the Committee, not only for the work that you have done—that feeling will be shared right across the system—but for the very courteous and constructive way in which you have always engaged with us and with our predecessor Committee in the last Parliament.

**Nigel Newcomen:** Thank you.

**Chair:** We wish you well for the future.