

“Rights behind bars: the conditions and treatment of those in detention”

Anne Owers – HM Chief Inspector of Prisons

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I need to start this lecture off with a disclaimer, which I always give in audiences such as this. I have spent the last three and a half years in and around prisons, not courts; listening to prisoners and prison staff, not to legal argument or academic discourse. So, this will not in any sense be an erudite lecture on the state of human rights law, domestic or international, in relation to prisons.

I want to do two things in the course of the next forty-five minutes or so. The first is to set out some of the human rights issues and dilemmas which I have observed in three and a half years of inspecting prisons in England and Wales: some of which have come before the courts here and in Strasbourg. The second is to consider why independent inspection of prisons is necessary, and what form it should take if it is to be part of human rights compliance; and within that to raise some questions about current plans for restructuring public service inspectorates.

The importance of protecting human rights in a closed institution such as a prison is well established in the various human rights instruments and bodies that exist to provide the necessary safeguards for those detained by the state. It is also accepted by our own politicians. Jack Straw, when Home Secretary, prefaced the International Centre for Prison Studies handbook, *A human rights approach to prison management*, by saying: ‘I strongly believe that the way societies treat those who have been deprived of their liberty is a litmus test of commitment to human rights’. And this government was among the first to ratify the new Protocol to the UN Convention against torture and inhuman and degrading treatment, with its undertaking that there should be independent inspection of places of detention.

It is well known that we currently have around 75,000 people in our prisons: more *per capita* than any other western European country. There is considerable relief that that figure is not higher: projections earlier this year suggested that the number of

those in custody by now would be over 80,000. I say 'in custody' advisedly, for there is no way that that number of people could physically be accommodated in existing prisons; still less that they could be accommodated safely. They would have been decanted into any available space: from police cells to army camps.

The levelling off of numbers is, as I said, a relief: but it is not, as is sometimes implied now, a matter for complacency. There are, notionally, just over 77,000 'spaces' in our prisons. But that notion of space is based upon our prisons being 24% overcrowded; and without any headroom. We have built overcrowding into the system – just as surely as we have built in suicides, self-harm and mental illness: and the four are indeed closely inter-connected. And one of the themes of this lecture is the way in which, in our prisons, things that would be unacceptable in any other context can become accepted and even built in to the system.

Overcrowded prisons are places where two prisoners routinely share a cell meant for one, sometimes in the presence of an unscreened toilet. They may spend 23 hours a day there. Living in a lavatory, in any other public building, would contravene any number of public health and decency standards: yet it is an accepted part of prison life. Alternatively, prisoners may lack in-cell sanitation at all and be dependent upon a call-bell system: where a combination of unreliable systems, less than assiduous staff, security considerations and over-demand can mean that they 'slop out' – sometimes, as we reported at Portland Young Offenders Institution, out of the window; sometimes, as in women's prisons, when pregnant or menstruating . Or else, prisoners may be held in a ship, HMP Weare, which is essentially a container: with no access to any useful training or activity, and without natural air and light, except for one hour's exercise a day.

The Prison Service has no wish to hold prisoners in those conditions. But it has no headroom, or resources, to close down, or reconfigure, those establishments, as this would reduce the number of prison places.

Overcrowded prisons are, nevertheless, places which have experienced a sea-change in attitude, culture and activity over the last ten years or so. Nothing that I am

going on to say should obscure the fact that in our prisons there are more people being taught basic literacy and numeracy, more being treated and detoxified for substance use problems, more being offered mental health support, than in any other public institution. Additional resources have been made available, external specialists have been recruited, and standards of professional service aligned with those outside. Prison health care for example has benefited greatly from absorption into the NHS. I believe that the inspectorate has played a key role in stimulating those changes: pointing to deficiencies in reports on individual prisons; issuing thematics that recommend systemic change. But I also believe that the current population pressure, even in its present less acute form, creates a huge undertow, pulling against the kind of positive change we could see, and need to see. That undertow is not only because of the number, but also the kind, of people now in our prisons.

Another area where we have seen real change is the culture within prisons. These days, it is rare to inspect a prison where staff attitudes and behaviour are positively inimical to the dignity and positive development of those they hold: though it does happen. The focus on 'decency' within prisons, the fact that the prison service's own audit procedures now seek to measure the quality of life and relationships within prisons, has had a demonstrable effect. It is, though, much more common to find prisons where staff and prisoners together experience daily the effects of a chronic, unremitting pressure – where the strategy is to cope, in circumstances that inhibit the ability to deliver safe and positive environments. Prisons are good at coping, at dealing with what comes through the door: they have to be. Unlike other institutions, such as mental health facilities, they cannot refuse to accept anyone sent to them, unless they literally have no space, however unsuitable a placement prison is. They have, thank goodness, grown better at preventing riots and escapes. But those effective coping strategies can obscure the nature and extent of the problems staff and prisoners face behind closed doors.

As I have said, I do not want in any sense to underplay the valuable work that goes on in prisons, and the committed staff who day in, day out, manage some of the most difficult and damaged people in society. But I do want to focus on the human

rights issues that daily confront those within our prisons. Those issues have surfaced in court judgments, both here and in Strasbourg. My argument will be that those judgments are the tip of an iceberg: every day, governors in our prisons, are at the sharp end of human rights compliance; indeed in a few cases, they will be presiding over human rights violations they are powerless to prevent, or are unaware of.

Let me begin at the sharpest part of that sharp end: the duty of care, the duty to preserve life. The rate of all deaths in custody is increasing: but the rate of self-inflicted deaths is settling at a new high, of around two deaths a week. Self-inflicted deaths have become part of the currency of penal life: in a recent week where there were six, this did not even make the news. Most of those who kill themselves in our prisons are among the most vulnerable of prisoners: new to custody, sometimes not even sentenced, often detoxifying from drugs, mentally ill, in prison healthcare or segregation.

Yet the Prison Service has undoubtedly made considerable efforts to prevent and reduce suicide and self-harm in prison, spurred on in part by an inspectorate thematic report on suicides in prison. Systems, procedures and guidance for managing those at risk of suicide or self-harm have been developed. And the pattern of self-injury is now monitored.

Part of the role of an inspectorate is to check that those procedures are applied rigorously. But our role is also to point to the underlying causes of the epidemic of suicide and self-harm: the vulnerability of those entering prison, and the additional vulnerability that results from incarceration. And we bring a multi-disciplinary approach to suicide prevention: bringing in social work, healthcare and counselling skills. Recent studies have shown that suicide rates in prison do not necessarily correlate with vigilance in carrying out protective procedures. Organisations are good at process, at designing procedures. But suicide prevention is about something much more subtle and important. Suicide rates correlate very strongly with prisoners' feelings of distress, principally whether they feel safe, and this in turn depends upon right and respectful relationships with staff, other prisoners and their families. So, the

human dignity that is at the heart of human rights compliance is also at the heart of suicide prevention.

Inspections can capture that quality of life better than standards and targets can: by observing what is going on, talking to staff and prisoners, and carrying out confidential prisoner surveys. They can detect the difference between two prisons, similar in function, resources and population: where one is perceptibly safe and decent, in spite of low staff numbers and prisoners being out of their cells most of the day, and the other is edgy, unkempt and with a drug subculture.

However, there are important protective measures that prisons must take in respect of their duty of care to those they hold. Prisoners are particularly vulnerable in the early days in custody, not least because many are withdrawing from drugs. In the case of Judith McGlinchey, in 2003, the European Court of Human Rights found a breach of Article 3 in relation to her death, under a poorly managed detoxification regime. The previous year, my inspectors had reported on Styal women's prison, where we found women 'fitting and vomiting' in their cells for want of adequate detoxification. We called for urgent action. Eighteen months later, a proper detoxification regime was put in place – too late for the six women who died in the intervening period, all in the early days of custody, all having had a serious drug habit. And the absence of proper detoxification at Styal was not for want of knowing what it was, or how it should be delivered. The women's policy group in the prison service had developed effective treatment for drug withdrawal, specific to the substance use problems of women. But no-one ensured that it was put in place, as a matter of urgency, in a prison where around 70% of women were withdrawing from drugs. It was not because staff did not care (they did): but they were engaged in crisis management, in a prison that was barely coping with the scale of demand it faced – engaged in fire-fighting rather than planned prevention. It is welcome that there have been no deaths at Styal in the year since proper detoxification was put in place; and that detoxification generally, particularly in the women's estate, has improved considerably. That has undoubtedly been spurred on, and resources levered out of the system, because of the combined pressure of caselaw, inquiries and inspection.

Women prisoners have much higher levels of suicide than men. Sheena Creamer's case came before the House of Lords earlier this year, one of two cases that led to a judgment that coroners could, and should, comment on the circumstances, as well as the cause, of death. Sheena Creamer was typical of women who die in prison: not yet sentenced, worried about her home and family, recently withdrawing from heroin. The new inquest will look in detail at the circumstances that led to her death. But let me also put it into the context of New Hall, the prison where she died, and which we inspected last year. It is a prison where we found that each month 75 suicide risk forms were being opened; 129 self-harm incidents were being recorded, 43 of them involving ligatures (which require immediate remedial action if death is to be avoided); where every patient in the prison hospital was severely mentally ill (and when insufficient beds were available were likely to be held in the segregation unit). New Hall holds girls and young women under 21. 14 were on suicide watch; three 17 year olds were self-harming daily. Though there had been four self inflicted deaths in the previous 18 months, including Sheena Creamer, prison staff had saved many more lives, and indeed did so while we were there.

A raft of new processes and procedures for investigating deaths in custody is now being put in place, inspired by the Article 2 obligations now imported into English law via the Human Rights Act. *Middleton* and *Creamer* have established coroners' duty to inquire into the circumstances, as well as the causes, of death; hopefully in the context of a complete review of coronial powers and procedures. And inquests, increasingly, are recording verdicts of systemic failure: most recently, into the death of Annie Kelly in Northern Ireland. The Prison and Probation Ombudsman is now charged with investigating all deaths in custody and in probation hostels. That will be an onerous task: since 1st April, there have been 169 deaths (including deaths by natural causes and assault). Mounting speedy investigations, and producing swift conclusions that can seek to prevent recurrence will be a challenge. But these inquiries and inquests are only part of the picture. Inevitably, they start from the inability of the state to keep alive someone in its care. In our view, inquiries should also follow near-death incidents, both because the Article 2 arguments are equally

strong, and because the reasons and circumstances can better be established, and preventive measures taken.

I spoke earlier of population pressure and shared cells. This has implications for prisoners' safety, as well as human dignity. Those shared cells are inhabited by a transitory population, often arriving late and in numbers from court, or being moved around from prison to prison to make space for the next new arrivals. At one time, when pressure was at its highest, prisons and the prison service were effectively playing musical cells. Though the pressure has reduced somewhat, it is still there. The cases of Christopher Edwards and Zahid Mubarak vividly show the risks inherent in cell-sharing with others who may be violent or psychotic. Prisons need to carry out rigorous risk assessments before making those decisions. A few still don't, or do so scantily; and we point that out in inspections.

But consider what prisons are being asked to do. A prisoner arrives, perhaps with 30 or 40 others, in the late afternoon or early evening; in many cases still withdrawing from drugs. Leeds prison, when we inspected it last year, had settled in 438 new prisoners in a month. Each prisoner may carry with them only a court warrant (in some cases, indeed, only an interim warrant bearing the informative information 'nature of offence – crime'). In a short interview, in a crowded reception area, before locking prisoners down for the night, staff must establish, largely from the prisoner him or herself, and from their own observations and experience, whether prisoners pose a risk to themselves or others – and then, juggling the few available spaces, place each one safely, either alone or with a suitable cell-mate.

Arriving at a new prison is a time of maximum vulnerability for prisoners. Yet prison staff are not helped by the fact that getting prisoners to prison at a reasonable time does not have the same priority for escort contractors, or the courts themselves, as getting them to court on time. Governors can face contempt proceedings for the latter; there are no penalties for the former: such as the mentally ill young man, with a history of self-harm and a recent family bereavement, who was sent to prison for a mental health assessment by a judge at 10.40 am and did not arrive in the young offender institution until 8.30pm. As often happens, prison reception staff stayed well

beyond the end of their shift, but they were unable to deal with his considerable problems fully at that time.

In my last annual report, I focused on the issue of mental health in prisons, something that has been developed by Nick Davies in his recent Guardian articles. Many of you will be aware of the first European Court of Human Rights' finding of an Article 3 violation in relation to UK prison conditions, in the case of *Keenan*. Mark Keenan was diagnosed with paranoid schizophrenia, and personality disorder. He spent his time in prison being shuffled between the healthcare centre (where he attacked staff) and the segregation unit (where he eventually killed himself).

In the last three and a half years, I have seen many Mark Keenans, still alive. In some cases, they are awaiting transfer to an NHS secure facility. This, though quicker than it used to be, still takes up to three months, during which time significant deterioration can occur: in an environment that, despite the best efforts of staff, is not essentially therapeutic and cannot treat severe mental illness without the patient's consent. When asked how long he thought a prisoner in this condition should wait before transfer, the head of prison healthcare, at a recent conference, said 'If it were a relative of mine, no more than a day or two'.

Others, however, have been returned from secure facilities, as too disruptive to manage – such as a young man of 18, in a body belt for three days, because, without it, he tore strips off his anti-tear clothing and tried to hang himself; if given a television, he broke the glass and ate it. Thanks to considerable and commendable efforts by the Prison Service, he was re-sectioned and re-admitted to a secure NHS hospital. When I inspected one women's prison recently, the healthcare centre had a row of stools outside three of the cells. Outside each sat an agency nurse, literally watching the prisoner at all times. Inside each was a mentally ill young woman: including one who came to the door, begging to be let out because her voices were tormenting her, and who had already tied nine ligatures that morning. Daily in our prisons, governors try to keep such prisoners safe, while also respecting their human dignity and the safety of other prisoners and staff. And daily their vulnerability is increased by imprisonment: like the girl in one prison with Aspergers syndrome, held

in a healthcare centre that mainly contained mentally ill and severely self-harming adult women; and it was a feature of her condition that she mimicked the behaviour around her.

Other Mark Keenans are no longer alive. One in five of those who kill themselves in prison do so in segregation units or hospitals; and it is a fair bet that most are mentally ill: indeed, in some prisons we visit, it is impossible to get a bed in the prison hospital if you are merely physically ill. The prison service's strategies for coping are often less than ideal: borne out of desperation, not care planning. Like Mark Keenan, many prisoners are shuffled between healthcare and segregation, to offer respite for staff – or from prison to prison in a policy known as 'sale or return' where governors pass the parcel of their most difficult and disruptive prisoners. One young man who killed himself had been in 30 prisons in 18 months.

These are extreme cases: as are all potential human rights violations. But they are the tip of an iceberg of chronic mental instability and depression: some statistics put this as high as 80% of the prison population. I described it in one report as the 'quiet despair' of those who are not so acutely ill that they demand constant attention. It is undoubtedly the case that mental health provision in prisons has improved and is set to improve still further. Under the new commissioning arrangements with primary care trusts, many prisons now have mental health in-reach teams; some have day-care centres. But those teams are still fire-fighting; in most cases they can only deal with those whose mental health problems are both severe and enduring, rather than chronic and sporadic.

It is important to chronicle and inspect the treatment and conditions for those prisoners; and to uphold their human rights. But we also have to ask deeper questions: principally whether prison is the right place, or can ever provide the right environment; especially in overcrowded prisons where prisoners, particularly 'difficult' prisoners, may be locked up most of the day. Let us be in no doubt. We are using our prisons as society's 'too difficult' tray, in which to contain (and it is little more than that in many cases), usually for short but repeat periods, those for whom there is no proper provision outside prison, or who have already been excluded from society.

They include the mentally ill; as well as young people who have been in care, excluded or truanted from school, those addicted to drugs and alcohol. And we are asking prisons to do this on the cheap. In a local male prison, where many of those prisoners are to be found, the average cost of a prisoner place is £30,000 a year; a bed in a regional secure NHS facility costs £136,000; for women in local prisons, the relative costs are £36,000 and £163,000. Those difference are a precise measure of the difference in the number of skilled staff available to treat and work with the patient.

I could have focused this part of the lecture entirely on the conditions and treatment of children in prison, for whom we have a specialist team. There, I would have made similar points. The children who end up in our prisons are the most difficult and damaged in society. They are cared for by staff who are not specifically trained in the care of disturbed adolescents, at a fraction of the cost of a local authority secure home, and outside the direct scope of the Children Act. Resources and facilities for them have considerably improved, but our inspections continue to raise concerns about some of the very vulnerable young people held in prisons. Mr Justice Munby's decisions in the *Howard League* and *CF* cases have helped greatly in clarifying both the fact that the children themselves are within scope of the Act, and that local authorities, and particularly Area Child Protection Committees, cannot divest themselves of their responsibilities for safeguarding those children simply because they are incarcerated.

Courts, and their ability to act on human rights abuses, are a key part of human rights protection. But those in prison may not find it easy to access courts. Many will be there for only a short time – on each occasion – though their total length of stay in prison may be years. Others will be incapable, or unable, to access legal help – at least until it is too late. For that reason, international human rights law demands that there should be independent monitoring of places of detention: indeed, in recent cases, our findings have also been able to assist the courts to put into context the individual case before them.

Incarceration is, in this country, the most severe penalty that can be exacted: it therefore requires the most robust scrutiny. Prisons are, by definition, hidden from public view. As I have already made clear, they face some difficult human rights dilemmas, looking after people that society outside has given up on, or does not want to deal with. But they are also places that can and do easily become self-referential, lacking the external checks and balances that make institutions ask difficult questions, rather than revert to a default setting of institutional convenience. At their very worst, they can degrade those they hold. The pictures from Abu Ghraib are a potent reminder of what unchecked custodial power can do. There are others. In the mid-nineteenth century, English local prisons were transformed into agents of carefully graded punishment by Edward Du Cane, using the treadmill and the crank: so that one judge considered a two year sentence in such a jail to be 'next only to death' in severity of sentence. Sean McConville, in his book of that name, reminds us

If we define power as the enforcement of will irrespective of the wishes of the person upon whom it is enforced, the system of local imprisonment developed in England from the 1860s onwards was, above all, an exercise in power. Cut loose from the restraints of community and traditional ethical moorings, it came close to a confusion of means with ends, and a belief that any means was justified short of permanent disablement, death or the personal caprice or advantage of the captor.....[it had] but one intent: to suppress resistance and to ensure that, whatever was going on in the mind of the offender, he would submit or be broken.'

That is, thank goodness, light years away from anything I have observed in any of the custodial settings I have inspected. But it indicates the power, and the isolation, within a closed environment. And there have been abuses in our prisons, within recent years. Prisons can go bad very quickly: the balance of power is always with the custodian, not the detainee.

Prisons inspecting is an essential part of those 'ethical and community moorings' that McConville found lacking in the late nineteenth century. Indeed, as he points out, the development of a harsh and essentially punitive system was paralleled by the emasculation of the powers of prison inspectors, some of whom had previously

been robust critics of slopping out, and the use of degrading work, but who became subsumed into the work of the Prison Commissioners, who ran prisons. At the same time, the powers of local justices of the peace (the community watchdogs, forerunners of independent monitoring boards) were also curtailed.

I have said on other occasions that I have rarely been into a prison where inspection did not reveal something that those running it did not know, or had ignored. I have described the 'virtual prison'- the one that exists in the governor's office, at headquarters, in the minister's red boxes - as compared with the 'actual prison' being operated on the ground. Inspections pick up that 'inspection gap' between what ought to be and what is. Some of those seem minor by comparison with the extreme issues I have raised earlier: but they are all important to the human dignity of those held in custody.

Let me give you some examples. Adjudication is the process by which offences against prison discipline are judged and punished. Punishments can include: cellular confinement in segregation, sometimes without access to any external stimulation except a Bible; loss of the meagre prison earnings (therefore no tobacco, no additional food); loss of association (and therefore access to phones and contact with families). There is no independent judge, no defence lawyer to hold the ring. In one prison we inspected recently, we observed adjudications where a prisoner was cautioned, without being found guilty; where a complete defence was ignored; where no mitigation was sought; and where the only word on the adjudication sheet was 'guilty'. In another prison, a woman who had tried to commit suicide was adjudicated on, and punished, for refusing to go into strip conditions (a practice that in itself is contrary to guidance issued by the Prison Service). These are practices which can flourish unchecked – not because of any wilful desire to abuse, but simply because they become customary.

In some prisons, we have found staff routinely reading all prisoners' personal correspondence - in one case because they thought it was helpful to know what was going on in their lives – in spite of ECHR rulings establishing prisoners' right to privacy and subsequent prison instructions that only a small proportion of

correspondence should be randomly read, except for prisoners who pose specific risks.

Prison inspections are important for the small as well as the large things: for example, a young offender institution which provided 18-20 year old young men with a cold breakfast pack the night before – which unsurprisingly, was eaten before bedtime – and then only provided a baguette the following lunchtime, with no substantial meal until the evening; or a segregation unit in which all prisoners had to take off their shoes.

We are now regularly inspecting Immigration Removal Centres, where those who are not charged or convicted of criminal offences are held under administrative powers. Their detention is rightly subject to particularly high scrutiny. We found centres where detainees held in separation units, whether for disciplinary or protective reasons, were routinely strip-searched and held in strip conditions, without any assessment of risk. We have expressed particular concern about the detention of children: which we say should be exceptional and for no more than a matter of days. Yet when we inspected Oakington, we found that there was no evidence of the minimum safeguards that should be in place to detain children – that decisions are made at a senior level, with regard to Article 8 of the ECHR. Indeed, officials appeared to be unaware that those procedures existed.

We do not routinely inspect court cells, or prisoner escorts. When we did, in the course of area criminal justice inspections, we found, in one court, conditions that would not be tolerated within a prison: no certification of the number of prisoners who could be held in each cell, ineffective alarm bells and evacuation procedures, no child protection measures or risk assessments for carrying men, women and children in a single van. In another court recently, we found wooden partitioned cells 33 inches wide (about 90 centimetres in new money). They are now out of use.

Finally, we were recently asked to independently inspect the military corrective and training centre at Colchester, having already assisted the armed forces to develop procedures to manage detainees at risk of suicide. Given recent concerns about army facilities, both here and overseas, this is both welcome and necessary. We did

not unearth any scandals; but we did find a failure to understand and implement the army's own policies on diversity. We also found a complaints procedure that did not meet international norms, or provide the necessary safeguards for detainees who might be at risk, or vulnerable. All the detainees were marched on to the parade ground and called to attention by the CSM. Anyone with a complaint was then invited to 'step out' and marched to a room where they could speak to the Army Visiting Officer, an officer from the nearby garrison.

Those are examples of the way in which genuinely independent inspection lifts the lid on closed institutions on behalf of the public, pulls out common practices and exposes them to the light of what is normal, and what is right. It is a very important protective and preventive measure. It is also an important driver for change: pointing out good practice, as well as bad, and giving ammunition to those running prisons, and supporting prisoners, to press for resources, support and reform.

But independent inspection, of the kind that I have described, can also be uncomfortable: for prisons, the prison service, officials and government. There is at present pressure to streamline and join up both public services and the structures that inspect them. There are undoubtedly gains to be made in making those services more efficient and accountable, reducing duplication, and filling in gaps in provision. Within criminal justice, there are evident gaps: among the different agencies charged with bringing offenders to justice and protecting communities; between those who look after people in prison and those who supervise them outside. But there is always a danger, in simplifying and amalgamating, that legitimately different aims and objectives are elided and confused: that we end up with what I have called a 'primeval soup' rather than clearly focused processes.

We use the word 'inspection' to describe a variety of different functions: regulation, performance management, independent evaluation of whether public bodies are meeting standards and providing value for money. But the kind of inspection I have been describing is different. It is, as I said earlier, part of the system's 'ethical and community moorings'. It is no accident that we do not inspect the Prison Service, but the conditions in prisons and the treatment of prisoners. We examine the treatment

of the prisoner as a whole person, not just an offender. We also examine the whole environment of the prison - healthcare, relationships, safety and education. And we need to do so in detail, establishment by establishment. There is a critical difference between inspection activity that examines the efficiency of the system as a whole, and that which provides a detailed and holistic account of each individual custodial environment. Finally, our work ranges beyond criminal justice to encompass other custodial settings, and reaches into those agencies and services that provide health, education, employment and housing for those in and after custody.

I have set out four principles that have to underpin this kind of inspection. One is that the scale and focus of inspection of individual places of custody is the core of the role, and should not be reduced or sidelined. Of course, the relationship of prisons to the rest of criminal justice, and indeed the non criminal justice agencies that can and should provide alternatives to prison, and support prisoners on release, is essential. But that needs to be in addition to, not instead of, continued attention to what goes on behind a prison's walls.

Secondly, it is important that the Chief Inspector has the ability, the flexibility and the resources, on his or her sole authority, to go into any prison at any time without warning. It is a critical human rights safeguard – indeed a kind of virtual inspection - that every governor in the country knows that at any time an inspection team can knock on the gate, demand entry, draw keys and have unfettered access to all prisoners, staff and documents.

Thirdly, reporting needs to be directly to Ministers and the public, not mediated through officials, or indeed through any other structure. It is entirely understandable that services, departments and governments want to co-opt inspectors, to help them in the task of improving performance, effectiveness and efficiency. All inspection is about making things better, and this requires dialogue and co-operation with those running services, and those responsible for them. But a human rights based inspectorate, in the end, always needs to be able, if necessary, to stand outside government: to speak truth to power.

Fourthly, and consequentially, the final cornerstone of independent prisons inspection is that it has its own methodology and criteria for inspecting custodial environments, which are independent of the standards and targets of those services. Those criteria are grounded in ethical principles, as set out in international human rights standards. We define a 'healthy prison' by reference to four tests, first set out by the World Health Organisation: whether prisoners are held in safety, treated with respect for their human dignity, offered purposeful activity, and prepared for resettlement into the community. Our detailed criteria, which we call *Expectations*, are based not upon minimum auditable standards, but best practice. They do not examine whether targets are met - targets often measure what is measurable, not what is important. They test quality, not compliance. They may, as the earlier part of my talk has shown, point to a systemic failure, that stretches across, and even beyond, the Prison Service. They do not, as such, look at value for money – what price a suicide? – though they may well reveal that resources are wasted, or staff or managers insufficiently active.

This has not been achieved without a struggle. Both my predecessor and I were under some pressure to accept, and monitor, the standards of the Prison Service: indeed Sir David Ramsbotham was initially told that he could not publish *Expectations*. It is a measure of the robustness of those criteria, and of the credibility of the Inspectorate, that I have now been able to reissue them without challenge, referenced against international human rights standards. Ninety-six of them derive from those standards. Furthermore, we have been able to adapt the criteria and methodology to apply to, and be accepted in, other custodial settings, such as IRCs and the military corrective centre. Indeed, our *Expectations* have now been exported to other countries: they have been welcomed by the Foreign Office's human rights department, and also shared with the many delegations (from Russia, China and elsewhere) who come to my office to ask about best practice in safeguarding conditions and treatment in prisons.

Those pillars of independent prisons inspection have been guaranteed by Ministers, in Parliament and in correspondence. They are just as important in the new landscape sketched out by the National Offender Management Service (NOMS).

Much of that is welcome: the focus on the offender, rather than the service; the need to join up what happens in prison with what happens outside; the need to reduce the prison population if prisons are to be effective. But the NOMS framework is also based upon 'contestability': envisaging an increased involvement by private sector and contracted-in providers. It is, indeed, if anything, more important that there should be an independent inspectorate, able to stand outside the contracts that are negotiated with private providers and the process by which they are determined, as it is for independence from the standards a public sector service imposes on itself. My first inspection of Ashfield, a privately-contracted Young Offenders Institution, the most depressing report I had then issued, described an establishment that was 'failing, by some margin, to provide a safe and decent environment for children'. A principal reason was that it had become 'an island, isolated from developments and expectations in the rest of the juvenile custodial system. And it was an island whose contours appeared to be the precise terms of the contract, rather than any wider understanding of the needs of children.' It is to the credit of Ashfield's managers and contractors that, within a short time, it was turned into one of the better children's prisons. But it is a warning shot across the bows of those who believe that privatisation and contract compliance, of themselves, will always drive up performance.

So, the need for a robust and independent inspectorate will remain, if anything, more important in the NOMS era. But independence is a fragile construct. It is, of course, important that it is set out in statute: that a Chief Inspector is responsible directly to the secretary of state, not through any intermediaries or officials; that he or she has a duty to report as they find. But this is not enough. Before I was Chief Inspector, a delegation of Russians came to discuss prisons and prison policy. They asked about the inspectorate of prisons. 'Who appoints the Chief Inspector?' – 'The Home Secretary'. 'Where is the Chief Inspector's office?'- 'In the Home Office'. 'And who is the Chief Inspector?' – 'A retired General'. 'Ah', they said in understanding tones, 'we too have independent inspectorates like that.'

It is the skirmishes around the edge of the territory, like the battle for our own standards, which often define the contours of independence. As in the nineteenth

century, inspectors have constantly to be on the watch against becoming part of the system they inspect, however seductively that is presented by those who are part of it, and who also genuinely wish to improve it.

There are, as I have said, moves to restructure inspectorates, as well as the services they inspect. No one can object to scrutiny, reform and change: inspectorates demand it, and must necessarily be subject to it themselves. In relation to prisons, this has involved consideration of a merger with the probation inspectorate, mirroring NOMS. This could have advantages: not least the ability to focus on the individual prisoner or offender, and their treatment both within prison and under community supervision. The human rights dimension can sit alongside, and be of equal importance to, the management of offenders through the system. Alternatively, though, there is talk of a wider merger into a single criminal justice inspectorate, capable of looking across the whole criminal justice system, identifying gaps, encouraging joint working and effective process, promoting the overall aims of crime reduction and community safety. This is more troubling. It is difficult to see how a human rights based inspectorate can be other than peripheral to a body whose main aims are the effectiveness of the criminal justice process and the reduction of crime. Those are laudable aims: but they are different, and require a different approach, methodology and focus.

There are therefore some crucial questions to be answered if prisons inspecting is to be absorbed into a larger, differently focused, whole. First, how will the key principles I have outlined be guaranteed, not just in statute, but in practice and over time? Secondly, how can a human rights focus be preserved and nurtured within an organisation in which it is peripheral, or instrumental, to a broader aim? Thirdly, how is the direct connection between the prisons inspecting and the public, parliament and Ministers to be preserved? I remain concerned that, over time and perhaps inadvertently, the sharp focus and robustly independent voice of the prisons inspectorate may be lost. One answer to the Russians' question is that, no matter what the background of the person you appoint, if you give them a remit to report independently and freely on the conditions in our overcrowded prisons, you leave them, and their inspection teams, no choice but to be robust, focused and at times

awkward. But once that task is part of a broader aim, however necessary and laudable, there is a risk of blurring the process and changing the nature of the task and the way it is carried out.

I look forward with interest to exploring these concerns more fully, in the context of whatever changes are proposed. As I said in a previous lecture

'The bottom line is that, in reaching for new and innovative ways of solving old and so far intractable problems, we must not lose what we have got. That is a prisons inspectorate whose robust independence is a model for other countries; whose inspections and inspection methods are increasingly valued and adopted here; which is reporting on an alarmingly overcrowded and pressurised closed system; and which has responded to the challenge of expanding its custodial remit.. This is an essential part of the protection of the human rights of those held in detention. It is too valuable to lose or diminish.'