

Inspecting places of detention

Anne Owers explains the importance of independent inspections of detention settings.

The United Kingdom was one of the first signatories to a new optional Protocol to the UN Convention against torture and inhuman and degrading treatment. It came into effect last June and is another brick in the wall of international and domestic scrutiny over those whom the state incarcerates, and the places where they are held. It complements the regional European Convention against torture, which created an international body – the Committee for the Prevention of Torture (CPT) – to visit and report on places of detention throughout Europe. The UN Protocol, however, relies principally on the creation of ‘national protective mechanisms’ – which must be independent and expert; able to carry out regular visits, without warning, to all places of detention ‘under the jurisdiction and control of’ the member state; and to publish an annual report on its work.

Within the UK, that mechanism will in fact consist of a number of bodies with statutory powers of inspection and oversight – including mental health secure accommodation, police stations, secure children’s homes and military detention. But the Inspectorate of Prisons, with its statutory powers of inspection over prisons, young offender institutions, and all places of immigration detention, will clearly play a key role.

The international background is important, in providing the rationale, as well as the human rights imperative, for inspecting places of detention. Its objective is not to investigate, or to report on, torture and inhuman or degrading treatment – it is to prevent it. Inspection may

indeed discover and bring to light abuses; but those are symptoms of failure: of systems which have parted company with humanity and decency.

However benign the regime, power in a place of detention is always with the custodian, not the detainee; and abuses of that power usually begin slowly and incrementally.

For that reason, detention inspection needs to concern itself with every aspect of life in a total institution, seeking to ameliorate some of the dehumanising effects of detention on lives whose every movement and choice is controlled.

There are a number of key features in the work and methodology of the Prisons Inspectorate, which we apply to all places of detention that we inspect. We do not report on a service, its cost-effectiveness or efficiency: we report on an institution, its culture, decency, and safety. We are not bound by the standards that the institution, whether publicly or privately run, is contracted or expected to deliver. We inspect by our own criteria, referenced to international human rights standards, which define what constitutes a ‘healthy’ prison or custodial environment.

Inspections look for environments that can satisfy four key tests: that prisoners and detainees, even the most vulnerable, are held safely; that they are treated with respect for their

human dignity; that they are engaged in purposeful activity that is likely to enhance their skills; and that they are prepared for return to the community. We have found that these tests, properly applied, work in any place of detention – from a short-term immigration holding facility at an airport to a high-security prison.

Each of those tests is assessed by examining in detail every aspect of life in detention, from first reception to eventual discharge: taking in health care, education and training, use of force and separation, relationships with staff and other

prisoners or detainees, and support structures to prevent suicide or violence. We have developed three sets of detailed criteria for this task, called *Expectations* – one for adult

prisoners, one for juveniles, and one for immigration detention. They test quality, not compliance with targets or standards; outcome, not process or output.

Unhindered access to places of detention is clearly a prerequisite. But it is important that inspectors can get under the radar of a controlled and controlling environment. So, over half of inspections take place without warning: we simply turn up at the gate. With current budgets, and a burgeoning prison population, inspections cannot be as frequent as we would like: it is therefore crucial that every manager knows that tomorrow could be the day the inspectorate turns up. Unfettered access also means that inspectors have their own keys to every part of the prison, and walk about unescorted. They can see all documents, observe everything that is going on, and speak in private to staff and prisoners. We are only too aware that what goes on in an inspector’s presence may be unrepresentative of what happens when we – or a prison manager – are

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not there. Confidential surveys of prisoners and detainees – carried out by our own researchers – are therefore a crucial part of our methodology, and allow us to compare prisoners' and detainees' experience in other similar institutions, or indeed in that institution the last time we inspected it.

All the resulting reports are published, at a time and with the content that is determined by the Chief Inspector. They can only make recommendations: we have no enforcement powers. However, over 90 per cent of our recommendations are accepted, and when we return, always without warning, to check whether they have been implemented, we find that over 70 per cent have been wholly or partially achieved within around two years. Recommendations range from the relatively minor – provision of adequate pillows, sheets, and clothing – to major: such as the closure of an entire wing. All are important to the quality and decency of life. The former are easiest to achieve; the latter may take some time – and even, in the case of the closure of the infamous A wing at Norwich, legal action which drew on inspectorate findings. For inspection is crucial in chronicling for others what is actually happening, as opposed to what ought to be, or is thought to be, happening behind closed doors. Inspection reports from juvenile establishments were submitted in evidence in the Howard League's challenge to the applicability of the Children Act in prisons; and reports are regularly cited in inquests into deaths in custody.

The first independent inspections (and detainee surveys) into places of immigration detention threw new light on, and stimulated debate into, the conditions for immigration

detainees, particularly children. This is particularly important, in a detention system where decisions are entirely administrative, detention is without limit, and there is no automatic oversight by the courts. At a minimum, inspection keeps those detainees in the public eye, but it can also expose those who are in fact unlawfully detained, such as a British citizen wrongly held for eight months.

Thematic inspections are also important, as they look at systemic issues. They have been influential, over time, in improving such important things as prison health care, the treatment of women and detained children, suicide and self-harm prevention, race relations, and the resettlement of prisoners. They are often initially greeted with scepticism by inspected services; but in time, their findings have usually come to be accepted, often as normative.

Police and court cells are now used to hold those remanded and sentenced by the courts, since the prison system is now overflowing. Already, we have carried out joint inspections with the courts and police inspectorates to examine and report on the conditions and treatment in those environments. In the coming year, this will be extended in a series of joint inspections of police custody in general: designed to provide the regular and independent oversight that the Protocol requires. This requires a new methodology: using the Prison Inspectorate's specific custodial remit and approach, as well as the Inspectorate of Constabulary's policing expertise.

Detention inspection is therefore expanding and consolidating. It is, and has been, a significant driver of change, by exposing the reality, good and bad, within the prison and immigration detention systems. But,

at the point when it is most firmly embedded internationally and nationally, it faces some considerable challenges. The unprecedented, and rising, number of people in both prison and immigration detention risks undermining some of the hard-won gains of the last decade or so. Suicides in prison are rising; prisons are too often failing to provide sufficient good-quality activity; the juvenile estate is under great pressure; mental health needs of prisoners are beyond the capacity even of the improved prison health service; resettlement of prisoners is compromised by the distance from home and the transience of much of the population; indeterminate sentences for public protection are creating log-jams which increase the prison population and the despair of prisoners; the immigration estate continues to hold over 2000 children a year and an increasing number of long-stay and frustrated ex-prisoners.

The inspection of detention exposes not just the deficits and failings behind prison and detention centre walls: it also crucially exposes the gaps and failures in the communities and services outside the walls. The inefficiency and inaccuracy of immigration casework within the Border and Immigration Agency contribute to the extent and length of immigration detention. The absence of sufficient mental health and substance misuse services in the community means that the mentally ill and the addicted default to prison. School exclusions and trancies, and the treatment of children in care, are routes into young offender institutions. Inspection, therefore, holds up a mirror to society, as well as to the detention facilities it authorises and needs to know about. ■

Anne Owers is HM Chief Inspector of Prisons for England and Wales.
