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Inspecting Prisons

Interview with Peter Clarke

Peter Clarke is HM Chief Inspector of Prisons. He is interviewed by Dr Jamie Bennett, Governor of HMP Grendon and Springhill.

Peter Clarke was appointed HM Chief Inspector of Prisons in January 2016. He joined the Metropolitan Police in 1977 after graduating in Law from Bristol University. He served in a variety of uniformed and detective roles in London, including commanding the Brixton Division, and Staff Officer to the Commissioner of the Metropolitan Police. After serving as Deputy Director of HR for the 45,000 employees of the Metropolitan Police, in May 2002 he was appointed as Head of the Anti-Terrorist Branch at New Scotland Yard and National Co-ordinator of Terrorist Investigations, leading the investigation into all acts of terrorism in the UK and against British interests overseas. He retired from the police service from the position of Assistant Commissioner, Specialist Operations in 2008.

In 2009 he was appointed by the Prime Minister to be a member of the UK National Security Forum, created to advise Government on the implementation of the UK National Security Strategy. In addition to holding a number of advisory and consultative roles in the private sector, he was a non-executive Director of the UK Serious Organised Crime Agency from 2009–13. In 2014 he was appointed by the Secretary of State for Education to be the Education Commissioner for Birmingham with a specific remit to investigate alleged Islamist infiltration of schools. He became a member of the Board of the Charity Commission in 2013, and is a trustee of the Crimestoppers charity. He has been a Fellow of the Center for Law and Security at New York University and was awarded an Honorary Doctorate in Laws by the University of Bristol in 2008.

Her Majesty's Inspectorate of Prisons for England and Wales is an independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention. The role of HM Inspectorate of Prisons is to provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of 'healthy establishments' in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public. The inspectorate work jointly with other inspecting bodies, in prisons this includes Ofsted focussing on

education, the Care Quality Commission and the General Pharmaceutical Council focussing on healthcare, and HM Inspectorate of Probation focussing on offender management.

Inspections assess four areas: Safety (that prisoners, even the most vulnerable, are held safely); Respect (that prisoners are treated with respect for their human dignity); Purposeful Activity (that prisoners are able, and expected, to engage in activity that is likely to benefit them), and; Resettlement (that prisoners are prepared for release into the community, and helped to reduce the likelihood of reoffending). There are three stages to each inspection. The first is the pre-inspection visit which includes the collection of preliminary information and the conduct of a confidential survey of a representative proportion of the prisoner population. The second stage is the inspection visit, where data is gathered and assessed against the published *Expectations*.¹ Sources of evidence include prisoner focus groups, individual interviews carried out with staff and prisoners, the prisoner survey results, documentation and observation by inspectors. At the end of this the prison is awarded a numeric score for each of the four healthy prison tests, from one ('Outcomes for prisoners are poor') up to four ('Outcomes for prisoners are good'). The third stage is the post-inspection action, including the production of an action plan, based on the recommendations made in the report and subsequent progress reports.

The Inspectorate's work constitutes a part of the United Kingdom's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This Protocol requires signatory states to have in place regular independent inspection of places of detention.

HM Chief Inspector of Prisons is appointed by the Justice Secretary from outside of the Prison Service. The Chief Inspector reports directly to the Justice Secretary and Ministers on the treatment of prisoners, conditions in prisons, young offender institutions, court custody and other matters in England and Wales as directed by the Justice Secretary. The Chief Inspector also has a statutory responsibility to inspect and report to the Home Secretary on conditions for and treatment of detainees in all places of immigration detention in the United Kingdom.

This interview took place in September, 2017.

1. Available at <http://www.justiceinspectorates.gov.uk/hmiprison/our-expectations/> accessed on 14 September 2017.

JB: How much experience did you have of prisons prior to taking up your current role and how did you develop your knowledge and understanding?

PC: Prior taking up the role my experience of prisons was mainly interviewing prisoners or dealing with transactional matters such as the transfer of property. I hadn't had a great deal of experience of the main working parts of prisons. I developed knowledge and understanding by doing the job. I have visited a lot of prisons, somewhere around fifty, since taking up this role. I have also talked to colleagues, read around the subject, and observed what is going on. It's a role where it is important to have a degree of technical knowledge, but also maintain an overview, taking a step back from the technicalities.

JB: What in your view is the purpose of imprisonment?

PC: Primarily it is to carry out the sentences of the court. Beyond that there are a whole range of purposes that the prison should seek to achieve, many of which are interdependent. Of course custody should be safe and secure, it should be rehabilitative and should prepare prisoners for release so that they can play a positive part in the community after prison. There is interdependency in as much as if prisons are not safe, in particular, it is unlikely that other objectives around reform, rehabilitation, education and training, will be achieved. That is why I have said several times, most recently in the Annual Report, that the Government's ambition to reform is, in my view, unlikely to be achieved unless the basics are right. That requires decent regimes that enable men to take part in activities that are available.

JB: How would you describe the specific role of Chief Inspector of Prisons?

PC: It is to lead the inspectorate but also to be the voice of the inspectorate. Given that we are an inspectorate and not a regulator, our only power is our voice, and it is important that our voice is heard when that is required.

Another key role is to fulfil the legal obligation under the Prisons Act 1952 to inspect the treatment and conditions of prisoners. I don't look at prisons to see whether they are keeping within their budgets or complying with Prison Service Instructions, my statutory role is to see how prisoners are being treated and what conditions they are being kept in.

JB: How do you regard our relatively high national imprisonment rate?

PC: That is simply not an issue for me and I don't express a view on it. I know many non-governmental organisations have a view on reducing the prison population as one way of securing improvement. My view is that it is not my role to express a view on an issue that is a matter for government policy and sentencing policy. What I have a very clear view on is that however many it is considered appropriate to imprison, they should be kept in conditions that are secure, safe and decent. There is a particular emphasis on decency at the moment as there is an imbalance between prisoner numbers and the ability to provide a decent custodial environment.

JB: What role do you consider that prisons play in relation to social problems and inequality including poverty, unemployment, and mental health?

PC: Prisons are a reflection of society in some ways but not in others. For example there is a high proportion of people in prison who are vulnerable or disadvantaged in various ways. This includes mental health, ethnicity, and other issues that increase potential vulnerability. Prison does disproportionately reflect certain groups within society. It is difficult to come to a view of how prisons can reverse this or improve society

other than by trying to ensure that when prisoners are released they are able to be positive role models within their communities. That is a noble aspiration, but far off at the moment.

JB: What do you see as the role and impact of prisons in relation to race and diversity?

PC: Prisons have to seek to be exemplars in their understanding of the issues and their response to them. Time and time again we see in our surveys, which are a key part of our inspection methodology, that BAME groups perceive that they are receiving less favourable treatment. Often we see that prisons do not devote enough attention to understanding why that perception exists. One example is at HMP Ford where we have had three consecutive inspection reports recommending that there is more done to understand why BAME prisoners have more negative perceptions of their treatment. It did appear that there might be some basis in reality as there did appear to be disproportions in allocation to the more favoured accommodation and access to release on temporary licence. We expect every prison we inspect

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to be addressing these issues. The Lammy Review² will hopefully also give more impetus to this.

JB: It has often been argued that women's prisons are largely a replication of men's and that therefore the distinctive needs of women are not effectively met. Is that your experience? How does the inspectorate ensure that the distinctive needs of women are met?

PC: One of our inspection teams has a specialised focus on women's prisons, so we try to develop a depth of knowledge and understanding. We find that women's prisons inspect fairly well. We generally find that the standards in women's prisons are better. So it's not a case of finding a simple replication of men's prisons. We see a lot of very good work focussed on meeting the needs of women. What is really troubling are the levels of self-harm, which is far higher in women's prisons. In that sense also, they are not a replication but there are particular needs that must be understood and met.

JB: Your annual reports have been very critical. The most recent states that 'Last year I reported that too many of our prisons had become unacceptably violent and dangerous places. The situation has not improved—in fact, it has become worse', that there had been 'a serious deterioration in standards in our prisons' and that you 'have often been appalled by the conditions in which we hold many prisoners'.³ How has this situation come about?

PC: It is a combination of factors. There is far too much violence in our prisons. The figures speak for themselves. There are incredibly high levels of violence and this has been rising. What sits behind that violence? Drugs clearly have a major influence, in particular psychoactive substances. They are a game-changer, it's not just another iteration of the long-term problem of drugs in prison. It's very different because of the violence, the unpredictability of the impact they have upon individuals. This also creates a culture of debt, violence and bullying.

In addition there are far too many people in prisons with mental health problems who shouldn't be there. Some should be moving through to secure units but there aren't enough beds and they are spending too long in prisons. Far too often I have seen people with mental health issues who for their own safety or the safety of others find themselves in segregation units. The sheer numbers of people with mental health problems is inexorably rising. In our last inspection of Pentonville, there were 1,300 prisoners and just under a quarter were on anti-psychotic medication, which our health professionals judge as being incredibly high. This gives a sense of the problems.

Another factor that contributes is the lack of staff at the moment. Traditionally the inspectorate has focussed on outcomes rather than what sits behind them, but it would be remiss of us not to comment where there was a clear link between certain factors and positive or negative outcomes. The lack of staff in some prisons means there is no flexibility within regimes, so when unexpected events occur such as staff sick absence or hospital escorts for prisoners, the regime suffers. Prisoners don't like the unpredictability that causes, they get frustrated and that compounds all of the other problems.

There has also been a lack of long-term investment in the physical environment. The

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ending of 'slopping out' was of course excellent, but an unintended consequence is that we have far too many prisoners held in shared cells with an unscreened lavatory in a space that also serves as a bedroom and dining room for two people. This is not decent, it's unsanitary and is not a fit way to detain people in the 21st century.

JB: The language used by you in this report is emotive. It is impossible to be exposed to the realities of imprisonment without having an emotional response to it. What feelings, discomfort and questions do you experience while undertaking your work? How does this affect you and how do you cope with this?

2. Available at <https://www.gov.uk/government/organisations/lammy-review> accessed on 14 September 2017.

3. Available at <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2016-to-2017> accessed on 14 September 2017.

PC: I would challenge the assertion that the language is 'emotive', I would prefer to think it is 'descriptive'. It might be strong but I try not to be emotive. I try to describe what I see. That is what I see as the function of the inspectorate. In terms of my professional background, this job is a continuation of what I've been doing for the last 40 years, which is finding out facts, assessing them, coming to judgements, writing them down and reporting on them. In terms of emotional response, it was recently put to me during a radio interview that I sounded angry. I responded that I wasn't angry, but I was disappointed in some of what I have seen in prisons, disappointed that some of the regimes and conditions are not such as to give the prisoners a realistic chance of making progress and making steps towards rehabilitation during their sentence. It is more disappointment than discomfort or feeling emotional about it.

JB: What are the fundamental solutions to the crisis in prisons? Is it financial, strategic, or moral?

PC: I don't think there is a crisis in all prisons. I've mentioned women's prisons that generally report well. In addition, open prisons by and large do well, as does the high security estate, which generally does what is asked of it and does it pretty well. The problems are really around the category B and category C training prisons and local prisons. The solutions are a corollary of what I have described as the problems. Some of them clearly need resources throwing at them. I don't think you can take 30 per cent out of a people-intensive business like prisons and not expect there to be a seriously adverse effect. It is a fact that in some prisons there are simply not enough staff to enable the leadership to be innovative, flexible or deliver the services they want to. There is a need for investment in the prison estate as so much of it is not fit for purpose. It's about getting the basics right. Dealing with the violence, drugs, contraband, making them decent places. Only then can you move forward with rehabilitation, education and training.

Some issues demand a strategic response such as the response to the ageing population. I have seen some really good things happening in prisons around the country. There are wings set aside for older prisons at, for example, HMP Northumberland. There is good work in the open estate at HMP Leyhill. There are many examples but it feels piecemeal. Given all of the projections around about the future profile of the

prison population, we may need to take a more strategic approach. Do we need to keep men in their sixties, seventies and eighties in category B and category C prisons? Many of them need to remain in custody, there is no question about that, and many are not suitable for open conditions, but do they need the level of security and cost that comes with category B and category C? Could they be held in a form of custody that, put crudely, looks like an old people's home with a wall around it? Within that could they more easily receive the services and support that should be offered to older people, disabled people or those requiring palliative care?

JB: What do you see as the role of the Inspectorate over the coming years in stimulating and sustaining reform?

PC: We will continue to report what we see. We are an inspectorate and not a regulator, but as well as ensuring our voice is heard, we need to ensure that someone acts in response to our recommendations. There was planned to be legislation that would have created a statutory duty for HM Prisons and Probation Service, or the Secretary of State, to respond to our recommendations. That did not happen due to the general election and has now been lost. Nevertheless, there is work taking place in order to replicate

that without legislation. The Secretary of State has publically confirmed his commitment to ensuring that inspectorate recommendations are implemented. I am hopeful we can come to a position that ensures transparency and actual implementation of our recommendations. That would enhance the role of the inspectorate in identifying where action is needed, and potentially also in identifying and spreading good practice.

JB: You have expressed concern about your recommendations not being implemented and indeed noted in your most recent annual report that 'we found—for the first time—that the number of our recommendations that had been fully achieved was lower than the number not achieved'. Why do you believe this situation has come about and how can this be improved?

PC: There is work to be done to understand this and to see if there are variations between types of establishments in relation to the uptake of recommendations. We also need to know whether recommendations within different categories of our

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healthy prisons tests are taken up more effectively than others. I also want to know if there are trends over time that we should be understanding. Immediately, there are two things that strike me. The first is that there are variations between broadly comparable prisons. For example some local prisons take our recommendations seriously, and I have to say that shows when we inspect. Others don't and they give off a sense that the report has been put on the shelf and left to gather dust. The second is why there is seemingly less uptake now than in the past? This needs further analysis, but it may be that many prisons are under such pressure that their priority is to keep the show on the road day-to-day, to maintain the regime, keep people safe, and deliver whatever they can of the activities they offer. As a result, inspectorate recommendations are not their top priority. I can't say that is definitely the case, but it is the impression I have gained from some places.

JB: The Government White Paper 'Prison safety and reform'⁴ proposes some significant changes to the inspection process. In particular, it proposes the introduction of 'a formal rectification process where the inspectorate's findings can act as a trigger for the Secretary of State to intervene in the worst cases' and that 'inspections will also include consideration of how the leadership of a prison is contributing to the achievement of the outcomes it inspects'. What is the significance of this shift towards evaluating managers and triggering intervention?

PC: We are not in the business of evaluating managers. That is for the likes of Deloitte and PwC or for line managers as part of the annual appraisal process. We are not in that business. The business of the inspectorate is outcomes for prisoners. What I am inviting inspectors to do is when they find an outcome, whether good or bad, to ask 'why?'. What is it that has brought this outcome about? That way we can potentially help the prison to understand what it is they need to do in order to rectify the problem. If it is good practice we are looking at, it helps us to understand what has brought that about and help us in the business of promulgating it. In the modern era, it is not sufficient for the inspectorate to say this is an outcome and we don't care what has

brought it about. That is not right. We should be more constructive than that. We are not in the business of evaluating managers or saying there is a particular style of management that is appropriate. That would be interfering in the management of prisons. It is about looking at outcomes and understanding what role leadership and management have had in bringing that about.

The aspiration of the White Paper was to have a mechanism for triggering intervention and this was planned to be incorporated into legislation. That will not now take place and therefore we are discussing administrative measures that would have the same effect. My concern is that some prisons that are not providing a safe or decent environment do not always get the support they need in order to rectify this. It is not

good enough that there are some prisons that have consistently struggled to achieve basic standards of safety and decency. It is a big step forward to have a process where the Chief Inspector can raise a significant concern with the Secretary of State and the Secretary of State is required to respond. The raising of such concerns and the response should be in the public domain and would therefore bring a degree of public accountability. It can be scrutinised by both the general public and the House of Commons Justice Select Committee, who can hold the

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Secretary of State and me to account. More generally in terms of our recommendations there is an ambition to have a process where HM Prisons and Probation Service responds to our recommendations saying what it is they intend to do, that is publically available and brings a similar level of public accountability. What concerns me at the moment is that an action plan is completed and then what happens to it? We don't have the capacity to follow up on a regular basis. I see that as a line management responsibility. Sometimes I go to feedback sessions on the last day of inspections, where the feedback is provided. At some of these, the line manager for the prison has been there, the deputy director of custody or regional director, and they have said yes you are right, all these things need doing. I find myself wondering what that person's role has been in overseeing, supporting, guiding and demanding, if necessary, action in relation to the previous inspection. There is a clear responsibility for HM Prisons and Probation Service here.

4. Available at <https://www.gov.uk/government/publications/prison-safety-and-reform> accessed on 14 September 2017.

JB: You have described that, your inspection expectations are ‘underpinned by international human rights standards’, not set by HM Prisons and Probation Service or ministers. Some managers and official reviews have expressed concern that this means there is a misalignment between what the organisation is expecting to be achieved and what you expect. Others, including yourself, have argued that this independent foundation is central to the credibility and effectiveness of inspection. What is the significance of this difference and is it sustainable?

PC: Not only is it sustainable, it is absolutely vital. It is an international obligation under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment to carry out inspections and the standards against which those inspections should be carried out. It is not satisfactory for an organisation to set its own standards and then mark its own homework. The very essence of independence is to have standards that are enduring, are not influenced by political fashion, passing resource constraints or management trends. There should be a more permanent backdrop against which planning and development of custodial policies or practices can take place. Self-defining standards are flawed as a concept. Occasionally I get the response that the inspectorate have criticised something, but what we have criticised is compliant with a Prison Service Instruction. That is not what we are looking at. That would be the role of a regulator. We are not a regulator and so we stand aside from the organisation and that includes the self-defining standards they set for themselves. The organisational standards will, at times, be influenced by expediency and that should not form the basis of our judgements.

JB: Inspection teams are drawn from a wide variety of professional backgrounds and this has been seen to be a significant strength. Is there a case for extending this so that some ex-prisoners are employed as inspectors?

PC: I wouldn't rule that out. As with any member of the team, we would need to think about the value they would bring. That wouldn't necessarily be solely by virtue of being a prisoner, although that might have a value. There are capabilities and qualities that are required of any colleague working in the inspectorate. There are also issues around security clearance and vetting that apply to any member of the team. I don't rule it out, but at the moment I am not positively going out looking to recruit ex-prisoners.

JB: In Scotland, the Inspectorate has been enlarged so as to encompass the work of independent monitors in prisons. How do you judge this development and would you seek closer co-operation or even merger of inspection and independent monitoring boards?

PC: I wouldn't judge that development as I haven't examined it in detail. Scotland is different from England and Wales, not least in terms of scale. You couldn't just bring the IMB and inspectorate together. You would need a pretty significant infrastructure to support them. We must not run the risk of losing the uniqueness of IMB, which comes from the fact that they are local and they are in prisons every day. There is potential for looking at how we might collaborate, not necessarily in a formal way, but through a flow of information. That can inform, for example, risk based decisions about where we inspect and when. We could also think about how they might in some way become the 'eyes and ears' of the inspectorate. They do have a distinct role that should not be lost, but I know that many share similar frustrations to mine, about follow up to their reports and recommendations. We shouldn't forget them when thinking about the impact we can have on prisons by examining them from an independent perspective.

JB: Finally, looking back over the last two years and looking forward to the future, how do you feel about the task you have taken on?

PC: I find it an enormous privilege. That is partly because I have an enormously committed team who do a great job and have a strong sense of working to a clear set of values. They are committed to maintaining and preserving the independence of the inspectorate. It is a privilege to be leading them. I am acutely aware that I have come into this role at a hugely important time in the history of prisons. They have been on a difficult journey but the challenge for the inspectorate is to help secure improvement and make prisons very different places from those that too many have become. I'd like to think the inspectorate could be seen as a positive resource for prisons without compromising our independence. I don't want us to be tolerated as some sort of necessary evil. To be seen as disrupting everything in a prison for a couple of weeks, and that everyone lets out a big sigh of relief when we go. In a truly gratifying number of places we have been welcomed, received co-operation and have been seen as a positive influence to help them make progress. Across the prison system there is huge commitment from leaders and indeed right across the organisation to making prisons better places. I'd like to play a positive role in that.