

A Peer Review of Her Majesty's Crown Prosecution Service Inspectorate

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I. Introduction and background to the review

I.1 In May 2009 I was asked by Stephen Wooler, Her Majesty's Chief Inspector of the Crown Prosecution Service, to undertake a Peer Review of the Crown Prosecution Service Inspectorate (HMcpSI). The Peer Review is the latest in a series of reviews commissioned by HMcpSI over the years as part of its on-going organisation development to assist the management team in thinking about the way forward for the organisation and its response to the challenges ahead.

I.2 The terms of reference (ToR) for this review were to consider and determine how the role of the Inspectorate may need to:-

- develop in order for it to maintain an inspection regime which remains fit for purpose in the context of a joined up CJS; and
- respond fully to changes in the prosecution landscape including any brought about by the implementation of the Attorney General's Strategic Review and Strategy Programme. This will include consideration of the current expertise and skill base within HMcpSI and how this may need to change.

I.3 A copy of the Terms of Reference is set out in full in Appendix A.

Background to the Inspectorate

I.4 The purpose of HMcpSI is to enhance the quality of justice through independent inspections and assessment of prosecution services, and in so doing improve their effectiveness and efficiency.

I.5 Established in 1995 as an internal quality assurance unit in the Crown Prosecution Service (CPS), it became an independent statutory body under the Crown Prosecution Service Inspectorate Act 2000. Since its establishment the Inspectorate has operated against a continually changing tableau and HMcpSI has moved to meet these challenges through internally driven initiatives and externally commissioned reviews.

1.6 HMcpSi has much to be proud of. Throughout my consultation process it was widely praised as an independent and robust Inspectorate, delivering quality work that has made a direct contribution to the raising of standards within the prosecution area. Moreover, the need for an independent and professional Inspectorate was emphasised at the highest levels as a critical component of the criminal justice system. This is a testimony to the professionalism of the Inspectorate.

1.7 The Inspectorate has been given considerable scope to shape and develop its way of working. In responding to the challenges it has continually developed its inspection role and adapted to the changing remit of public inspection. The Office of Public Service Reform (OPSR) principles for inspection of public services form the basis for the delivery of the HMcpSi services and they are evident in its approach to its work. For the purposes of completeness they are that public services inspection should:-

- Pursue the purpose of improvement;
- Focus on outcomes;
- Take a user perspective;
- Be proportionate to risk;
- Encourage self assessment by managers;
- Use impartial evidence wherever possible;
- Disclose the criteria used for judgement;
- Be open about the processes involved;
- Have regard to value for money, including that of the inspecting body; and
- Continually learn from the experience.

1.8 Since its inception in 2000, HMcpsl has developed its approach to inspections. The introduction of the Overall Performance Assessments (OPAs) to supplement the original Area Effectiveness Inspections (AEIs) streamlined the inspection process, reduced the amount of resource dedicated to an inspection and provided a comparative measure across the nationwide service. The OPA inspection process has also undergone further refinement with increasing emphasis on business management and HMcpsl has shown itself to be receptive to and proactive in delivering change.

1.9 The Inspectorate has continually managed its business within a changing environment and has demonstrated a strong capacity for self reflection and change. The work of the Inspectorate has been impressive and it is well respected as an organisation.

Methodology

1.10 As required by the Terms of Reference, my review involved extensive consultation both inside and outside HMcpsl. A full list of those consulted with is included in Appendix B. They included interviews with representatives from Law Officer Departments, Criminal Justice Inspectorates, the Voluntary and Community Sector, Central Government and HMcpsl. Information was also drawn from a number of sources, including an examination of HMcpsl background papers, management and performance information data. I was supported in my task by Amanda Hannan, Stephen Dolan and Brendan McGuigan from Criminal Justice Inspection Northern Ireland and James Morton, Julie Walker and Sarah Merchant from HMcpsl. I would extend my thanks to all those who participated in the Review.

1.11 The Peer Review was carried out in accordance with Terms of Reference agreed by HMcpsl. The Review focused on the capacity and capability of HMcpsl to deliver quality services in light of recent changes to its inspection approach and the possibility of an extended remit (to be considered in the context of the Government's forthcoming response to the Justice Review Committee's report on the CPS) to cover prosecutorial bodies not superintended by the Attorney General. It has also tried to take account of the proposed changes highlighted by the CPS. The question was not so much to concentrate on how services had been delivered in the

past, but rather to consider the extent to which HMcpSi, as it currently undertakes its work is positioned to meet the challenges of change in the future.

2. Inspection in a changing prosecution landscape

2.1 This review is set within the context of the potential for considerable change within the prosecution landscape. A key driver for the review of HM CPS is the Strategic Review and Strategy Programme run by the Attorney General's Office which aims to define the modern prosecution service and how best to achieve this. The Strategy programme looks at what is expected now and in the future and incorporates a number of separate projects including, the Law Officers' Departments Strategy Programme, the Fraud Mapping Project and the Investigator – Prosecutor Project. This major programme of reform has the potential to greatly influence the structure and delivery mechanisms for prosecution services generally, including those not superintended by the Attorney General, although the latter would require cross Government agreement. Any significant changes are likely to be medium rather than short term.

2.2 The work of the Attorney General's Strategy Board involves looking at the prosecutorial landscape as not all prosecutorial organisations are superintended by the AG. For example, Department of Work and Pensions (DWP), Health and Safety Executive (HSE) and Local Authorities all engage in prosecuting activities but are not superintended by the Attorney General (AG). The possible implication for HM CPS (and it should be noted this is very early days in the process) is that it becomes the "inspector of prosecutorial services" with a consequent need for it to rebalance its workload to reflect the new responsibilities. HM CPS would welcome this change and its business plan already contains an objective to expand the scope of its activities.

2.3 Although the full extent of the change has yet to be worked out and the implementation timescale remains uncertain, there has already been considerable institutional change with the merger of the CPS and Revenue and Customs Prosecution Office (RCPO). Further institutional change may also take place.

2.4 These changes are intended, reinforce and support wider government initiatives across the justice system to improve public confidence, deliver an efficient and effective service and improve a local delivery landscape. The increasing focus is on the end-user experience and there is an on-going

emphasis on the delivery of joined up services across the justice system. This means continued focus on the interfaces between agencies at a local level and the ways in which services are delivered on the ground.

2.5 Against this backdrop the CPS is also changing and developing its approach to ensure that assessment of public interest is based upon and responsive to knowledge of community concerns. Its emphasis over the next three years is to improve its community engagement activity with the Community Prosecutors being a key element in this innovative approach.

2.6 The prosecution service is increasingly seen as the gatekeeper to the criminal justice system. The introduction of statutory charging in 2004 placed the Prosecutor at the centre of the criminal justice process. Their increasing role in the development of crime reduction strategies, with powers to divert from prosecution, leads to a more sophisticated role for Inspectors in assessing the delivery of the service. The CPS will increasingly look to HMcpso to assist in the delivery of its organisational objectives within the criminal justice system. Other major areas for change within the CPS are the development of a stakeholder engagement strategy, improved communication, greater transparency and development of its strategic role as an influencer in identifying inefficiencies.

2.7 After extensive internal debate, the CPS has set out a clear direction of travel in relation to the development of the prosecution service. Building on the work that has been completed to date, the Director of Public Prosecutions has stated, “a modern prosecution service is emerging”. A key element within the CPS change agenda is the setting of explicit standards for prosecutors within the service.

2.8 The Director of Public Prosecutions (DPP) has also stated that there is a need for the involvement of all those engaged in the criminal justice system to contribute to the development of a modern and effective service – “every agency must contribute to delivering a modern criminal justice service, from investigators to judges; from defence representatives to all other prosecutors.” The fundamental role of the CPS is to protect the public, support victims and witnesses and deliver justice.

2.9 The conclusion to be drawn from the changes to the prosecution landscape and the organisations within it are that the future will potentially

look very different from what has gone before – although the direction of travel is not a foregone conclusion. There is a need therefore that the Inspectorate reflects on these changes in order to set out how it might contribute to the emerging agenda and add further value to organisations as they strive to deliver a new approach to the delivery of services. Recognition of this need prompted the commissioning of this peer review.

2.10 At the same time a clear view was expressed as to the importance of an independent and objective Inspectorate that had the capacity to respond flexibly and responsively. While the CPS is a mature organisation with a clear sense of purpose, its central position within the justice system demands on-going independent and objective scrutiny. Changes to the CPS are likely to be incremental and gradual. HMcps is the organisation to help assist with this direction of travel. The need for a responsive, flexible and objective inspection body was clearly expressed.

2.11 The delivery of this important agenda, however, will potentially take place when there will be increased demands on the services of HMcps – in terms of new organisations to inspect, a change in the inspection agenda and greater emphasis on thematics and joined up working.

2.12 In my view the question is not whether HMcps should change but the scale and nature of the change required as well as its timing given that the Law Officer Department's strategy is at an early stage of development. This is not a reflection on the value of the work that has been delivered to date. It is rather a consensus view that the future landscape of prosecution services, and more specifically the developments within the CPS, will require changes to the inspection approach to meet the changing business requirements.

3. Engaging with Stakeholders

3.1 There is still a degree of uncertainty around the nature of response required by HMcpSi in relation to the business agenda moving forward. An essential first step is to clarify the emerging requirements of the key stakeholders and to consider the business implications for the Inspectorate.

3.2 These are likely to vary according to the requirements of different organisations. The extension of the remit of the CPS and possible changes to “prosecution services” more generally will have a direct impact on the work undertaken by HMcpSi. In discussions around the changing landscape, interviewees while noting the contribution made by HMcpSi in raising standards, frequently raised the issue of the need for an inspection process that meets more directly the emerging business needs of the CPS.

3.3 At a strategic level there was a greater requirement to develop a more collaborative approach to the inspection agenda. This would require greater clarity about the role inspection can play and the benefits it can deliver. In particular, issues were raised around the role of the Inspectorate in providing assurance on the delivery of CPS standards, the assessment of outcomes and in providing strategic support to the overall direction of travel within the CPS. What this exactly means can only be developed through direct and sustained dialogue between the Inspectorate and the CPS. Indications are that CPS wants to be assessed on its achievement of outcomes, such as improved community respect for prosecutors, awareness of the “prosecutorial offer” and improved communication. While these are all worthy aims, they cannot be divorced from the ultimate aim to successfully prosecute and increase the success rate of prosecutions.

3.4 This raises, in the first instance, a question around the requirements of an independent Inspectorate and the role that it plays. At one end of the continuum is the need for a fully independent inspection body that provides assurance to the Minister and the wider community on the operation of the justice system. At the other end, is the need for an Inspectorate that is fully aligned with the business needs of the organisations it inspects (in this case the CPS) and one that provides a direct contribution to its

performance improvement; objectivity rather than independence is likely to be a greater asset in this context.

3.5 While the two requirements are by no means mutually exclusive, achieving and maintaining equilibrium of approach is essential. This can only be achieved through a clear understanding of the new inspection requirements of the justice system and achieving clarity around any revised role that an inspectorate can play in assisting with the delivery of a new policy and delivery agenda.

3.6 Increasing collaboration between the Inspectorate and the inspected body does not move the Inspectorate away from independence. The desire to provide support to the business and performance development of the CPS must be tempered, however, with the requirement for inspection to deliver an external critique of its performance. The two while not always compatible, can co-exist.

3.7 It does mean recognising that HM CPS has a wider constituency than the specific needs of individual organisations. The requirements of Ministers and the public interest more generally means that it is important that the Inspectorate occupies – and is seen to occupy – a unique place within the criminal justice landscape. It provides support for the improvement of organisations while providing the wider assurance required that the system is operating fairly, efficiently and effectively. I believe the difference of opinion about the nature and level of inspection can be resolved through on-going dialogue between the inspected bodies and the Inspectorate.

3.8 The starting point for an independent inspectorate is, perhaps, most succinctly described in the 10 OPSR principles. Adhering to these principles is a guarantee of independence, that is not necessarily a barrier to evolving the inspection regime to reflect the changing requirements of the inspected bodies.

4. Changes to the Inspection Process

4.1 Changes to the wider prosecution landscape and emerging requirements from the CPS will require a new approach to inspection. This will be in addition to changes which may be necessary in response to diminishing resources in what is a relatively small organisation with just 21 staff.

The purpose of inspection

4.2 The first issue relates to the purpose of inspection itself. Clearly from the Minister's perspective there is an important role for the provision of independent scrutiny of the performance of the Law Officer Departments. In any on-going development of the role of the Inspectorate this needs to be recognised. It was clearly stated, at the highest levels, that an independent Inspectorate was critical to the provision of assurance that the justice system was working effectively. There is also a need for a responsive and flexible Inspectorate to meet the on-going requirements of Ministers, often at short notice as in the Jubilee Line Review, the case of Anthony Peart and the need for scrutiny of the Leeds Magistrates' Court. In each of these cases Ministers needed to ascertain urgently what had occurred and obtain information as a basis for responding to serious public concern.

4.3 A second issue relates to the assessment of outcomes. The consensus of opinion in our interviews with stakeholders points towards inspections that focus upon the achievement of outcomes rather than adherence to process. This was expanded to say that inspection should consider outcomes for the end users rather than concentrating on internal management arrangements. They expected Inspections to look at the development issues across the CJS and not focus on one particular process or agency. HMcpSI is cited by the Attorney General as playing a role in assisting CPS develop this approach and subsequently inspecting and reporting on achievement. The recent thematic inspection on victims and witnesses is an example of testing the successful achievement of CPS and CJS outcomes.

4.4 In addition, respondents thought that HMcpSi should not become the “guardians” of CPS standards, but rather have a role in assessing the extent to which – on a risk basis – standards are being applied. The returns from the CPS Group Chairs inferred that HMcpSi was too close to the standard setting and internal management operations of CPS.

4.5 The clearly held view within the office of the AG and the CPS is that the CPS as an organisation has moved on and that it will continue to do so in the light of the planned institutional and operational changes to which it is subject. This meant a clear business focus on performance improvement, including the need to operate within increasingly diminishing resources, and a wider agenda on increasing public confidence in the justice system. This requires an inspection approach that is lighter in touch and more explicitly focused on delivering real business benefits in a different operating and organisational context.

4.6 There was a clear message that looking to the future a more collaborative approach to understanding how HMcpSi would meet the organisational objectives of CPS would be welcome. This contrasts with a retrospective examination of processes and systems. The work of HMcpSi should be seen to more directly support CPS. For their part HMcpSi regarded inspection as relying on empirical evidence and that is axiomatic of events that have happened. Giving credit for developmental improvements is referred to in the OPA reports but evidence is retrospective. Thus the debate lies around the type of evidence that is offered to CPS. The production of fully documented evidence or dependence on statements and interviews with management to give an opinion is a risk assessment that is within the capability of experienced HMcpSi Inspectors.

4.7 It was felt to be more beneficial to have a “critical friend” who could operate all levels. The CPS believes they have moved forward and raised performance in light of the previous inspections. They now want to influence how the process of inspection can contribute to continuous improvement.

4.8 Inspection by exception and/or only looking at poorly performing areas was a constant refrain. Parallels were drawn with the approach of financial auditors moving away from substantive audit to systems based audit with a

consequent quantum reduction in sampling. HMcpSi raised the point that only concentrating on poor performing areas would create a perception of the CPS as always failing and that best practice would be missed if excellent areas were also not inspected. Additionally, reliance on the CPS performance indicators and outcomes measures as the only risk indicators of failing delivery could miss some aspects of the service as the Key Performance Indicators (KPIs) were not comprehensive enough. HMcpSi recently discovered very serious questions in one area that had enjoyed an amber/green rating in the CPS performance system.

4.9 CPS believes the dissemination of best practice can be supported by the group structures as they brigade areas displaying both ends of the performance spectrum. They plan to disseminate best practice through training, seminars, publications and conferences and develop the CPS management information system to support this. Such an initiative would be welcomed by HMcpSi. Indeed, such an initiative was proposed several years ago after the joint HMcpSi/CPS Standing Committee was stood down. It was not brought to fruition. In common with other inspectorates such as Ofsted, HMcpSi has published a collation of good practice in the past. It has also identified good practice in its quarterly reports to the AG which are circulated to all CCPs.

4.10 To reduce the intensity of the inspection regime the consensus points towards a more self regulatory regime with the CPS and other prosecutorial bodies providing performance measurement and KPIs. The Business Development Directorate (BDD) of CPS would monitor and report performance. The capacity to do this will be influenced by the resources available within CPS. These performance measures coupled with self assessment would form part of the mechanism of risk assessment for the HMcpSi. This would essentially mean moving the analysis of the self assessment process within CPS and the external element of inspection would be reserved for areas and processes deemed by CPS and HMcpSi to be failing.

4.11 HMcpSi in its 2008 – 2011 strategy has moved away from cyclical area effectiveness inspections (AEIs) in favour of fewer risk based AEIs of the poorest performing areas. Increasing the amount of self regulation would eliminate the requirement for cyclical overall performance inspections. Once the Inspectorate had reviewed the area or processes deemed to be

failing they would make recommendations for improvement and follow-up to ensure recommendations were implemented. In the words of one observer, “The aim of the inspection should be to provide assurances that the CPS is delivering an appropriate level of service and *act as a development tool for improvement* beyond the legal decision making process”.

4.12 On the subject of measuring outcomes it was quoted by many as the preferred way forward and the answer to reducing inspections of processes and documents. The AG has stated that the inspection process of measuring outcomes required a new approach to mapping outcomes for service users across the CJS. The introduction of the community prosecutor offers the opportunity for the CPS and HMcpSi to collaborate on the identification of the outcomes and critical success factors as performance measures for this new service.

4.13 Thus a thematic inspection on increased community safety, increased awareness of the CPS and increased levels of satisfaction with the prosecution service will require analysis across a number of CJS agencies. The proposal to create a single Inspectorate was recognition of this although in the event the provisions contained in the 2006 Bill failed to achieve the necessary levels of parliamentary support. A possible option lies in the conduct of thematics within the CPS group structures. Following through a line of inspection across all the criminal justice system agencies in the areas covered by a CPS group would have some advantages. There would be difficulties in that not all agencies work to CPS and LCJB areas, for example HMCS and prisons are differently organised. The important requirement is a comparative model that was less resource intensive than the cyclical inspection of the areas.

4.14 Across the range of stakeholders there was support for thematic inspections. The successful thematic inspection of Victim and Witness experiences was cited. Supporters of this approach said that it looked at the issues from the perspective of the users. The greatest value was derived from understanding and improving the interaction of the separate agencies within the CJS, and the experience of the user and the delivery of outcomes.

Redefining the Inspection Process

4.15 As noted above HMcpSi has moved from cyclical AElS of all areas to risk based AElS. To continue with OPAs and AElS in an expanded prosecution landscape is not within the HMcpSi resource levels. This approach is not applicable to RCPO and Serious Fraud Office (SFO) and provides a diminishing return for the CPS. The characteristics of this inspection approach as expressed during the review were, to accept that some areas of work will be inspected and some areas of work will not be inspected, and that CPS and HMcpSi should work together in defining outcomes for performance improvement. It was not felt appropriate by external stakeholders to have a further round of OPAs as this would “lock” resources required for additional work.

4.16 The increasing development of the CPS Business Development Directorate was seen as an opportunity to streamline the inspection process. In 2004 a report indicated that HMcpSi and the BDD of the CPS could look to the development of a risk based inspection approach; the caveat being the necessary completion of a full cycle of OPAs. Having completed two rounds of OPAs the CPS Chairs were strongly of the view that a risk based inspection process that is more selective would reduce the resources involved and still achieve a valid inspection regime. The BDD of CPS has developed more comprehensive performance management information over the last five years which gives a baseline of areas’ performance. The CPS is strongly of the view that a dialogue between BDD and HMcpSi could form the basis for a fully risk based inspection regime. Only those areas not meeting the performance targets of the CPS model would be inspected. It should be noted that recent experience suggests that the current model cannot always be relied upon to identify the weakness performers which is why dialogue between CPS and HMcpSi is important.

4.17 Inspecting against the standards developed and promulgated by CPS makes the assumption that that the CPS sets standards for itself that are always the right ones and acceptable to the public and professional interests. Therein lies the danger that the organisation will become inward looking and use resource constraints to justify below standard service. HMcpSi has collaborated with the CPS in developing inspection frameworks

but, like other Inspectorates, reserved the right to reject a standard that did not meet the public interest. The implication that a risk based regime would rely on outcome based measures with a commensurate reduction in the analysis of processes is fully dependent upon the development of meaningful outcome measures.

4.18 The inspection of outcomes by an independent inspectorate must reach beyond simply quality assuring the statistics provided by the inspected body. The contribution to performance improvement and dissemination of best practice requires examining the processes behind failing outcomes with recommendations for improvement.

4.19 The CPS Group Chairs and other stakeholders interviewed shared the opinion that the Inspectorate's reports concentrated too much on reporting actual processes and statistics that could as easily be reported by the CPS itself. Examples quoted from OPAs did seem to indicate that processes in place were being recorded without any recommendation although respondents may not have appreciated that the text was confirming that aspects of the framework agreed with the CPS had been achieved.

4.20 The opinion of those interviewed was that a valuable inspection resource should concentrate on underperformance with recommendations to improve. The view expressed is that prosecutorial bodies should carry out their own reviews of adherence to process with HMcpSI performing dip sample audits. The reporting of compliance might then be formatted in a summary table for ease of reference.

4.21 From the HMcpSI point of view the explicit references to the existence of processes is assurance that the correct protocol is being followed with a concomitant reduction in the risk of prosecutions going awry. Taking this further they say, the dependence upon in-house standards and monitoring systems is only practicable if these standards are the right ones and in the presence of adequate performance measures, standards and targets.

4.22 There is evidence that the CPS does not have a comprehensive and challenging set of national standards and suitable targets against which performance can be assessed to the standards HMcpSI would expect to see.

The development of the community prosecutor approach is quoted as an area where the processes for delivery and links to outcomes are not clear with the potential for underperformance to go undetected.

4.23 Recognising that HMcpSi has in the past worked with CPS to develop standards and set or revise challenging targets there is an opportunity for HMcpSi to mould the inspection landscape in the face of the changes to the prosecutorial system. With confidence that the standards and associated targets are adequate HMcpSi can make more use of inspection based on risk analysis and using dip sampling.

Managing the burden of inspection

4.24 The majority of opinion formers interviewed for this review stated their perception of HMcpSi's emphasis on legal decision making and case file management, the consequent level of evidence required and the extent of the inspection programme as unsustainable if the inspection remit widened. The inspection process has evolved over the past nine years, OPAs are less intensive, AEs are now risk based and less frequent, sampling is reduced and joint and thematic inspections are increasing. Even so, applying the current inspection regime to a significantly widened prosecutorial horizon would be virtually impossible as the workforce is fully committed.

4.25 There would be too few Inspectors to deliver this intensity of approach and the inspected bodies would not have the resources to service the inspection regime as its remit would increase considerably. Thus reducing the extent of the inspection regime and reducing the intensity of the actual inspections were quoted as two possible solutions to this problem.

4.26 At an operational level within the CPS a range of issues were raised concerning the current inspection process. During the course of the review stakeholders referred to the professionalism of the inspectors, their efficient scheduling and the clarity and presentation of their reports. The CPS Group Chairs valued the HMcpSi reports and provided examples of where they added value. Improvements in communication between HMcpSi and CPS were witnessed over the last number of years and the inspection liaison and group strategy meetings were regarded as very beneficial to both organisations.

4.27 There was widespread support for the move from the AElS to the more streamlined OPAs. It seemed that the support stemmed mostly from the reduced effort required on part of the areas, the much reduced length of time dedicated to the process and the clearer reporting format with individual criteria. Even so, CPS interviewees raised a number of issues. Primary amongst them was a perceived burden of producing copious amounts of documentary evidence without, in the words of one respondent, “knowing if it contributed to the overall assessment”.

4.28 CPS stakeholders stated that although the inspection process is well planned and completed on time there is value in looking at the amount of evidence gathered against the value added. Specifically, a more prescriptive approach to the type and amount of evidence that would be assessed as demonstrating best practice was cited. Some suggested that examples of the type of good evidence provided by best practice areas would be beneficial. The emphasis moving forward should be on examination and dissemination of best practice rather than on the routine examination of files. While this was considered important initially there is a strong view that “compliance” type inspections are less relevant to the new agenda. However, it is in the examination of files that good practice can be revealed. The divergence of opinion again points to the need for an agreed way forward.

4.29 The scheduling of the inspections was also a point of discussion as the CPS chairs felt the timing was on HMcpSi terms and a more effective inspection could be achieved if the CPS had some influence over the timing of inspections. Mostly they felt that co-ordinating inspections with their workloads would divert less staff from front line work. They expressed a view that inspections should give them more credit for developmental work they were undertaking rather than examining in detail processes surrounding some failure to achieve in the past.

Developing a risk based approach

4.30 The Office of Public Sector Reform (OPSR) says “over time, inspectors should modify the extent of future inspection according to the quality of performance by the service provider. For example, good

performers should undergo less inspection, so that resources are concentrated on areas of greatest risk.”

4.31 The general consensus is to reduce the inspection programme using risk assessment to target the inspections. Building on the point raised earlier, the CPS state the inspection regime should rely upon the data produced by the BDD. The HMcpSi and BDD can then agree standards and set a baseline for performance. The areas falling below the baseline would undergo an OPA. Thus the CPS would self monitor performance and inspection would be reserved for those falling below the line. It would also allow for a more flexible response to individual areas as they arise.

4.32 Looking at this in more detail CPS interviewees said that HMcpSi needed to make some hard decisions. In the past the CPS was not deemed to have reached the performance baseline overall to make risk based assessments work properly. The view is that all the CPS areas have now reached at least an adequate threshold and risk assessment could be applied.

4.33 The opinion of stakeholders was that risk based assessments would focus on the specific non-performing areas and work areas. There was a need for responsiveness and flexibility to meet a variety of business requirements which would vary from year to year. Recommendations to improve should be made with the CPS presenting an action plan and HMcpSi following this up. Also, the three year OPA cycle was not seen appropriate for measurement of outcomes. As an example, CPS can measure public confidence more frequently than every three years and conduct this in-house without the need for HMcpSi to carry out an inspection. A number of CPS commentators suggested that as an extension of the risk based approach HMcpSi could trust CPS and its self assessment in some areas without a need to inspect.

4.34 The success of the approach lies in developing comprehensive outcome measures that are indicative of the overall health of the CPS. These go further than simple KPIs measuring the activities of the prosecutors by including value judgements from a range of stakeholders and the public. The qualitative assessments of a variety of observers provide more holistic indicators of the quality of service delivery and provide the

Inspectorate with the basis of more detailed inspection without overburdening the CPS areas with requests for information.

4.35 There are, as HMcpSi point out, pitfalls in an approach which does not afford a representative overview. HMcpSi has a statutory duty to annually report on the performance of the CPS. Reducing the level of inspection so that areas are only visited every five years could make this difficult, if not impossible. Although not ruling out the potential for internal QA complementing inspection, HMcpSi points to a previous failure when trying to implement just such a system. A considerable resource was invested by CPS and HMcpSi in developing a casework quality assurance process that ran into the sand. CPS line managers showed a reluctance to draw on the work in their assessment of individual performance. In addition they were also reluctant to report poor results and this diluted the robustness of the quality assurance system. The failure here may well owe more to the process of implementation rather than the actual concept and a commitment by CPS to explore this approach might be a way forward.

4.36 Changing to a risk based assessment requires confidence in the ability of the CPS to deliver the necessary management and information framework. There is always a question about the independence of an inspecting body which is seen to rely on the inspected bodies' data but there are precedents in the audit field of self assessment and internal management information providing the basis of assurance. HMcpSi are clear that their difficulty is not one of principle.

Organisational Implications for HMcpSi

4.37 The demands on the Inspectorate will increase within the context of maintaining current or possibly diminishing resources. This means a refocusing of the resources available to meet more immediately the emerging business requirements of key stakeholders.

4.38 A further issue relates to the skills base of the HMcpSi staff. Moving forward the organisation must take into account the increasingly specialist work such as complex terrorist cases, serious fraud and e-crime. Whilst, there is evidence that HMcpSi can adapt to a widening of its role with successful inspections of the Counter Terrorism Unit, RCPO, and the Services Prosecution Authority, the Inspectors did require additional time

to read into these areas and to scope the work. It is not a simple question of HMcpSi reallocating some of its current workforce to new inspections. The demand for specialist Inspectors may require the possible transfer of permanent inspection resources to specialist resources on a temporary contract or agency basis.

4.39 Inevitably the changes to the overall prosecution landscape and potential changes to the inspection regime have ramifications for the HMcpSi staff. As an example, inspecting the SFO will require experience of investigative techniques. Using associate, part time contracts, secondments from other Inspectorates and agency staffing arrangements would be the most efficient means of accessing this speciality resource. The pressure on resources and the future demands for efficiencies indicates that rebalancing the mix of permanent and outsourced inspection resources is required.

4.40 There were some statements that HMcpSi Inspectors needed to move back into the CPS after four or five years to keep up to date with the process. This is a common problem across all inspection bodies, particularly those with limited resources, who have relatively limited churn of staff. Feedback from the HMcpSi Inspectors tended to support this as Inspectors said that recent experience of the CPS made them aware of advances within the service. They also said that immediate knowledge of the operations environment helped them make recommendations that were less “a counsel of perfection” and more pragmatic.

4.41 Expansion of the prosecutorial landscape would also suggest that increased movement of staff from other prosecution services would be valuable in building expertise in HMcpSi. By creating a more dynamic inspection process there is an opportunity to strengthen the secondment aspects of the relationship with CPS and other organisations. Clearly this requires a commitment on both sides. A free flow of staff from the Inspectorate to inspected organisations is one way of ensuring both continuing freshness in approach and in talent.

4.42 A period of time in the Inspectorate should be perceived as a career enhancing move given the range of areas covered, the multi-disciplinary nature of the work and the complex nature of the enhanced inspection process. It was not always apparent in talking to stakeholders that this perception existed. Historically HMcpSi found it difficult to achieve the

movement of some staff back into CPS, although clearer loan agreements are beginning to overcome this. In practice more recruits now come from outside CPS.

4.43 The HMcpSI workshops identified some internal refinements that could also contribute to improved productivity. The planning and allocation of resources to the inspection programme could benefit from some input from an Inspectors group to ensure best use of skills. To complement this it was suggested that an internal inventory of skills should be carried out and an Inspectors' internal CV made available. It was suggested that the UG 7 Inspectors could be more heavily utilised during scoping studies and given more challenging assignments during the inspections. The quality assurance and completion of reports should be carried out using challenging targets for report delivery upon completion of fieldwork.

5. Development of Joint working

5.1 The provisions to amalgamate the Criminal Justice Inspectorates with the creation of the Justice, Community Safety and Custody Inspectorate were withdrawn from the Police and Justice Bill 2006. Despite this the Government's vision for a more effective and joined-up Criminal Justice System remained undiminished and Ministers believed that their aims could be achieved through enhanced joint working. To this end the Police and Justice Act 2006 establishes statutory responsibility on each of the five inspectorates to:-

- Co-operate with each other, and with the other named Inspectorates;
- Draw up a joint inspection programme and associated framework;
- Consult the Secretary of State, other inspectorates and named stakeholders in the formulation of the plan;
- Act as 'gate-keeper' for all inspections activity of specified organisations; and
- Delegate authority to inspect such organisations to each other, to other public authorities as appropriate.

5.2 The Chief Inspectors of the Criminal Justice Inspectorates are committed to developing an enhanced programme of joint work, including more and improved joint inspections, a business plan for joint work supported by a planning framework and common secretariat with shared support services as appropriate.

5.3 A Criminal Justice Chief Inspectors Group (CJCIG) formed by the five Chief Inspectors from the CJ Inspectorates has a role:

“To foster and contribute to the continuous improvement of the criminal justice system for all its stakeholders, through a programme of individual and co-ordinated inspections and monitoring, in accordance with the Ministers' policy for better joined up government” .

To this end the Chief Inspectors committed to a joint programme in 2007-08 to include a mix of early implementation of inspection in some areas and

scoping or preparatory work in others, working towards full implementation in 2008-09.

5.4 Since the joint working initiative began the programme of inspections has developed and recent enhancements such as sharing individual risk assessments and priorities, joint work on offender management and police custody are being realised. The opportunity is also being taken to develop and establish detailed support frameworks, consultative processes and methodologies to underpin the statutory requirements.

5.5 The nature of joint working arrangements can be broadly be categorised into two areas:-

- Pre sentence – involving HMcpsi working mainly with HMIC and HMCAI; and
- Post-sentence – involving HMcpsi working with Probation and Prisons Inspectorate.

While “Post-Sentence” inspection appeared to be working reasonably well, there were a number of issues arising surrounding the delivery of joint inspections within the “pre-sentence” inspection area. There is a gap between the strategic discussion on joint working and the detailed work to be undertaken. The development of the Terms of Reference and the allocation of resources was said to take too long. There was no common methodology (although work is in progress in this area). Each joint inspection is hampered by discussions about inspection processes. The absence of agreed working means many reports are a compromise and the lead Inspectorate does most of the work and produces most of the outcomes in the inspection. The majority opinion was that post sentencing joint inspections were more productive than the pre- sentencing efforts. The length of time taken to clear reports was also presented as problematic. There were also operational difficulties arising from the nature and culture of working arrangements between different inspectorates.

5.6 More significantly there was seen to be a fundamental disagreement about some of the issues to be considered during the inspection process – primarily around the involvement and degree of independence of the

judiciary. This disagreement had hampered the delivery of work in this area. The general consensus was that a more pragmatic approach should be taken in relation to the delivery of joint work.

5.7 Looking across the working arrangements it was suggested that once the Chief Inspector's Group has agreed the broad programme, a separate subsidiary group should agree the Terms of Reference and report structure for the inspections. The appointment of a person with executive authority for each joint inspection would provide a focal point for agreeing the process and the roles of participants. The Deadman report in 2007 similarly recommended the creation of a new senior post to lead and be accountable for the development of a model for delivery including policy, planning and all operational activity across the five Inspectorates.

5.8 Whilst a common methodology may not be possible there needs to be an agreed protocol or set of principles which can be adapted for each inspection. The relative roles of the Inspectors need to be balanced within each inspection so the lead organisation does not predominate. The successful joint inspections should provide lessons learned for those deemed less successful. There should be a structured approach to action plans and subsequent follow-ups for each joint inspection.

5.9 These views also echo the findings of the Deadman report into joint working completed in 2007. As well as identifying the lack of a common methodology as an issue, changes to the process of inspection were stated that correspond with my earlier findings on collaboration with the inspected body and a risk based approach. The report stated that, Local Criminal Justice Boards (LCJBs) "would like to see....a more consultative process overall, with Inspectorates having involvement up to a year beforehand to flag up potential issues. Whilst this could prove time consuming initially, if it were linked to a risk based approach it could help set the baseline for deciding which LCJBs might not need to be seen during the following cycle". A risk based approach can equally apply to joint inspections, thematic inspections and performance assessments.

5.10 Given the time that has passed since the previous debate on the issue of joint working there would be value in Ministers re-asserting the importance of thematic inspections to the overall assessment of the effectiveness of the criminal justice system.

5.11 Finally, the inspection of outcomes begs the question what are the outcomes expected from the CPS? The achievement of outcomes is influenced by a variety of variables not all within the scope of the CPS. There are a range of outcomes that could be considered, including:-

- raising the awareness of the prosecution services in the community;
- reducing crime;
- reducing the impact of crime;
- increasing community safety;
- increasing confidence in the prosecution service; and
- improving the experience of users of the prosecution service.

These outcomes are also influenced by agencies outside the CPS such as the police and the courts. Inspecting against the achievement of outcomes is delivered through thematic inspections that cut across organisational boundaries.

6 Conclusions

6.1 The key findings to emerge from this Review are:-

- There was a clear consensus on the importance of an independent Inspectorate.
- An Inspectorate needs to provide assurance to Ministers and the wider Community and assist in the improvement of the organisations it inspects.
- There are unfolding changes to the prosecutorial landscape that will impact directly on the requirements of the Inspectorate.
- There is a need for an Inspectorate that is more closely aligned to the business requirements of the organisations under inspection.
- HMcpSI as it moves forward will need to re-consider the purpose of inspection, the nature of the inspection process and its follow through.
- Joint between Inspectorates remains important and is critical to the assessment of outcomes. Changes are required to the current ways of undertaking joint inspections to improve effectiveness.

6.2 The context within which HMcpSI is operating is likely to change. While the exact nature, scale and timing of the change is to be determined the status quo is no longer sustainable. While this review was being undertaken the House of Commons Justice Committee published its report on the Crown Prosecution Service. Any consideration of the role of HMcpSI will also take place within the debate generated by this report.

6.3 One of the implications of change for HMcpSI is that it will not only be required to consider standards and practices but also, and equally importantly, develop a proactive engagement in the development and delivery of a performance improvement agenda. A less intensive inspection process will place greater reliance on data collected by the CPS on an on-going basis.

6.4 The increasing emphasis on measuring outcomes reflects the desire to assess performance from the perspective of the end users. CPS in giving evidence to this review stated that inspection should look at the inputs of other CJS agencies and their influence on the perceived delivery of services by CPS. It is axiomatic that centering on the delivery of outcomes involves more than one agency and resultant interfaces between those agencies. This in turn will shift the focus of inspection away from the outputs of an individual agency, in this case CPS, to inspection of a multi-agency or multi-function basis. Examples offered by CPS included HMcpSi taking the lead in commenting on the courts impact on the prosecution services.

6.5 The SFO and RCPO recognise the role of an independent inspectorate and reflected their support for the HMcpSi during this review. It was felt that the OPAs would not be the approach to either SFO or RCPO as their impression of these were used to give a comparative assessment of the CPS areas. They welcomed an inspection and would want to engage with the Inspectorate to jointly develop an inspection regime that helps develop the delivery of the service whilst also fulfilling the need for public accountability.

6.6 A useful starting point in the development of a more co-ordinated inspection agenda would be dialogue with the Office of the AG and the CPS. This would provide information on the nature of the inspection regime and possible scheduling issues. I believe this can be done without compromising the independence of the HMcpSi as an Inspection body and would helpfully build on the interaction that already takes place. It is also necessary to shape more directly the nature of the inspection agenda and process.

6.7 The elements to discuss are the need for an independent Inspectorate, the nature of inspection and the mechanism for service delivery. The first point requires a definitive statement about the need for an independent Inspectorate. The nature of inspection must be suitably described. If it is a fully risk based inspection using CPS data to target areas for more in-depth analysis that presents a different operating model to the current situation of rota inspections delivering league performance tables, a requirement for annual appraisal, and high levels of upward accountability. It would rely on measurement of delivery outcomes and rebalance accountability towards the end users.

6.8 Once described the mechanism can be designed. Less intrusive area based inspections being replaced by thematics looking across the CJS landscape with performance measurement assessed by user survey and analysis of statistics showing performance of key processes. The accountability gap between the area prosecutors and the DPP, formerly filled by HMcps, would fall to the Group Chairs using CPS outturns. There are difficulties within this as it depends on Group Chairs looking critically at the performance of their areas. The more detailed inspections would arise following risk review of poor performing areas and look at all the factors across the local CJS to deliver improvements.

6.9 At the present time the nature of the change process is unclear in terms that are sufficiently specific to influence a major shift in resource reallocation within HMcps. Once this area is subject to further discussion greater consideration can be given to the nature of the skills and experience required to deliver on the new agenda.

6.10 The repositioning of HMcps presents a challenge for the management and staff of the Inspectorate. Having met the Inspection Team I am confident that it is more than capable and enthusiastic of meeting the latest stage in its organisational development.

Dr Michael Maguire
October 2009

Appendix A: Terms of Reference

The terms of reference for the Review are:-

To consider and determine how the role of the Inspectorate may need to develop in order for it to maintain an inspection regime which remains fit for purpose in the context of a joined up CJS and respond fully to changes in the prosecution landscape including any brought about by the implementation of the Attorney General's Strategic Review and Strategy Programme. This will include consideration of the current expertise and skill base within HMcps and how this may need to change.

Due regard will be paid to:

- the strengths and weaknesses of current approaches to inspection of the CPS and other bodies currently inspected;
- the need for the Inspectorate to operate within a reducing budget;
- the requirements for joint working as set out in the Police and Justice Act;
- stakeholder expectations and perceptions;
- HMcps's statutory remit and name;
- governance structures; and
- Government policy on the inspection of public services.

A major review of Corporate Services Group and Inspection Support Team has very recently been undertaken. Whilst the peer review may wish to consider this, it is not envisaged that the review will be revisited in a major way. Fieldwork for the Review is to be undertaken in June – July and findings are to be presented to the Inspection Management Board in August.

Appendix B: List of Interviewees

Attorney General's Office

The Rt Hon Baroness Scotland of Asthal QC	Attorney General
Jonathan Jones	DG
Sue Patton	Director, Office of the AG
Lorraine Rogerson	Director, Office of the AG

Her Majesty's Crown Prosecution Service Inspectorate

Stephen Wooler	HM Chief Inspector
Jerry Hyde	Deputy Chief Inspector
Sally Hobbs	Deputy Chief Inspector
Rob Moir	Corporate Services Manager
Anthony Rogers	Head of Audit
Sarah Merchant	Training Co-Ordinator
Prof Stephen Shute	Non-Executive Director
Tony Summers	Lay Inspector
Joan Kostendo	Lay Inspector
Jackie Worrall	Lay Inspector
Peter Bennet	Inspector
Ian Yates	Inspector
London Workshop	9 Inspectors
York Workshop	6 Inspectors
Amanda Gough	Auditor
Heather Minshull	Auditor

Revenue and Customs Prosecution Office

David Green QC	Director
Gary Cox	Change manager

Crown Prosecution Service

Kier Starmer QC	DPP
Peter Lewis	CE
Steve Przybylski	HMcpsl liaison
Robert Marshall	CCP Lancashire / Group Chair Cumbria and Lancashire
Judith Walker	CCP Nottingham / Group Chair East Midlands
Nick Hawkins	CCP Hampshire / Group Chair Wessex
Barry Hughes	CCP Avon and Somerset / Group Chair South West
Christopher Woolley	CCP South Wales / Group Chair Wales
Paul Whittaker	CCP Merseyside / Group Chair Cheshire and Merseyside
Wendy Williams	CCP Northumbria / Group Chair North East
Baljt Ubhey	CCP Thames Valley / Group Chair
John Holt	CCP Gtr Manchester / Group Chair
Neil Franklin	CCP West Yorkshire / Group Chair Yorkshire and Humberside
Dru Sharpling	CCP London / Group Chair

Services Prosecution Bruce Houlder QC	Director of Service Prosecutions
Serious Fraud Office Richard Alderman	Director
Public Prosecution Service Northern Ireland Sir Alasdair Fraser CB QC	DPP
Her Majesty's Inspectorate of Constabulary Denis O'Connor CBE QPM Peter Todd	HM Chief Inspector Inspector
Her Majesty's Inspectorate of Prisons Dame Anne Owers	HM Chief Inspector
Her Majesty's Inspectorate of Probation Andrew Bridges CBE	HM Chief Inspector
Her Majesty's Inspectorate of Courts Administration Eddie Bloomfield	HM Chief Inspector
Office of Criminal Justice Reform Catherine Lee	Director
Her Majesty's Courts Service Martin Jones	Operation Director
Office for Standards in Education, Children's Services and Skills Roger Shipham Anne Orton	Director Divisional Manager
Victim Support Gillian Guy	CEO

Appendix C: Methodology

The evidence on which the findings in this report are based is drawn from a number of sources, including an examination of HMcpsj background papers, management and performance information and data, the views of stakeholders, face to face and telephone interviews with CPS chairs and interviews and workshops with HMcpsj staff across the grades. The Review comprised the following stages:-

Stage 1: Document review and Interviews - Strategic Landscape

Understand changes in prosecution landscape. Identify the AGO's view of inspection and the inspectorate. Assess implications of Strategy Programme and changes to corporate and support services. Clarify implications for HMcpsj.

Stage 2: Interviews with inspected bodies

Determine their customer expectations of the inspectorate. Gather data on their past experiences of the HMcpsj and their assessment of its capability and capacity. Gather insight into users views on the changing role of the inspection process and the role of HMcpsj in meeting that.

Stage 3: Interviews with CJS Stakeholders

Views on joined up working and partnerships. Also, the experience of other inspectorates in light of the changing landscape of inspection.

Stage 4: Interviews/workshops with HMcpsj

SWOT of HMcpsj and outlining possible response to new demands from AGO, restructuring of HMcpsj and the changes in the inspection role. Analysis of the impact of reducing budgets, new skills and management of the staffing resources.

Stage 5: Analysis and reporting

Analysis of all data gathered. In-house workshops to draw conclusion and make recommendations. Presentation of findings and draft report to IMG. Feedback and finalisation of report.

Document examination

A range of documents informed the review. The annual and quarterly reports of the CI to the AG gave insight into the self assessment of progress against strategic and operational aims. The correspondence with the AGO and the outline of the Strategy Programme clarified the increasing remit of the HMcpsj and the potential issues facing them. The evaluation and feedback from CPS chairs of the recent OPA exercise gave great insight to the perceived role of HMcpsj, its approach and the quality of its work from the user perspective. The consensus of opinion in this evaluation lent weight to the conclusions made. A review of the most recent OPAs for the 42 CPS areas and the London CPS areas gave background to the interviews with the CPS chairs and provided qualitative data to the review team.

Interviews

Interviews with the CPS Chairs were supported by a telephone aide memoir to give some structure and consistency to the process, although the aim was also to explore the views of the chairs without constraining them to formulaic answers. Other interviews with senior personnel in HMcpSi, other Inspectorates and stakeholder agencies focused on the strategic landscape with the aim of fostering an open environment delivering advice rather than criticism.

Workshops

Two workshops were held at the group HQs of HMcpSi. The aim was to confirm some of the feedback received from users and stakeholders and to capture the views of frontline staff to the proposed changes facing their organisation. The workshops were deliberately left to later in the review process to inform the CJI inspectors of the external environment.