



JUDICIARY OF
ENGLAND AND WALES

SPEECH BY NICHOLAS MOSS JP

TO UK BORDER AGENCY INSPECTORATE: AN INSPECTOR CALLS

LONDON

31 MARCH 2009

I was surprised - and delighted - when Kate White (*Senior Adviser, Office of the Chief Inspector of the UK Border Agency*) asked me to talk to you about the experience of being inspected. All the more so when I note that I am here as history is about to be made. In under twelve hours from now you move from the shadows into the full brilliance of your new role.

But I may never know why she asked me. Either there was no one else available to do it; or she thought that my experience as a former Probation board chair – it is two years to the day that I filed my last set of Probation Board minutes, if that is what ex-chairs do - had a longer shelf-life than I had anticipated.

I flatter myself that it was the second reason; but accept that it may be the first! Either way, I hope that my reflections will have sufficient objectivity to compensate for any dust that has settled on them since 2007.

I hope I shall bring to your deliberations a flavour of what it is like to be inspected; and some thoughts about inspection based on that experience. Based on my duties as a magistrate I shall offer some thoughts also about the independent aspect of what you will be doing. Together, I hope that they will have some bearing on your duties.

Of course, you may still feel that I am here under false pretences, because the Border Agency's purpose, and therefore the inspectorate's role, appears to be a world away from probation or, indeed, from other aspects of criminal justice with which I am involved, including my role as a courts board chair, which brings me into contact with the inspectorate of courts administration.

In many respects there are big differences. Probation's contacts are with offenders mainly and are for one purpose: to try to stop them re-offending. Thus, the inspection challenge there is to assess how well probation meets that demanding but specific requirement. With the courts, again the inspectorate's job is to check how well Crown, county and magistrates' courts are administered.

In contrast, the UK Border Agency's contact with individuals is varied. It will range from innocent holidaymakers to guilty drug smugglers, via those seeking citizenship, and plenty between. Another major difference: the agency operates in a lot more places - including overseas - than probation, or the courts.

Thus, for those reasons alone the task of inspection will be different from my experience and, I guess, uniquely challenging. So, on the face of it, there appears to be little common ground between the inspectorates.

But let me now posit otherwise. There are in fact two common threads which bind what you do as an inspectorate with my probation and court inspectorate experience, as well as with the work of other agencies.

First, there are the government's ten principles of inspection. They are applied across the entire public service inspection regime of which UKBA, Probation and the inspectorate of courts administration are part. The principles are an objective checklist for all inspections. I am sure you know them, so I shall not repeat them here.

The other strand, which, I suggest, underpins the first is the concept of independence. Inspectorates are creatures of statute. The UK Borders Act 2007, section 48, is yours.

In common with other inspectorates, you carry out your work independently. That means that you inspect the UK Border Agency's services free from the sorts of concerns or constraints that you might have if you were part of the Agency. You are in the driving seat. Unless your practice is seriously flawed, those whom you inspect do not have any option but to be inspected and to deal with the consequences - good or ill.

More than that, your independence can offer the public and Parliament a mechanism for impartial assessment of the bodies you inspect to see if they are working as we should wish them to work. It also offers the assurance that where they are not, they have been given objective advice about how to improve. It is difficult to overstate the importance of that independence. Indeed, this is where it strikes a chord with my work as a JP.

Judicial independence is also protected under law - the Constitutional Reform Act 2005. They are different sorts of independence, although there is a common thread - hence the parallel which I seek to draw.

Yours is an independence to check, verify and report. In a judicial context it is the independence to test evidence, to acquit the innocent and convict the guilty and to decide on sentence - according to law *without fear or favour, affection or ill will*.

Thus, different, but also, to a degree, comparable. That is because both are based on an equally fundamental requirement: that of fairness, expressed in judicial terms as *doing right to all manner of people*. And that is something which of which we should never lose sight, whatever the role.

Thus, the two structures within which you and other inspectorates operate - objective criteria and statutory independence - provide necessary clarity and freedom, along with the responsibility to be fair.

But they also place on the UK Border Agency Inspectorate, as with the other inspectorates, a responsibility to use that framework well. And it is that notion of responsibility that I want to develop as I take my theme in two directions.

The first direction: a little insight into the world you may not see, the world of *the inspected* based on my close encounters with inspection - half a dozen of one sort of another in as many years.

The second direction: some thoughts on the fact that I regard the inspectorate's independence also as an interdependence with those being inspected and how that might evolve.

Direction one: what is it like to be inspected? What happens when you know that an inspector is about to call? Of course, unannounced inspections are what they say they are, and those inspected may be taken unawares. But that is not the probation or the courts inspectorate way. Inspections, and their purposes, are known about well before hand because of the inspectorates' meticulous planning.

But in case you are tempted to think that planned inspections, as distinct from unannounced ones, are for wimps I can tell you that they are not. Indeed, I suggest that they can be more demanding than spot checks, which is not to imply that I consider spot checks to be of lesser value. Each process has its place.

My experience, though, is of planned inspections. During my watch as a probation board chair, knowing that an inspection was on the horizon, rather than finding the inspectors, out of the blue, on the door step one morning was quite a thing.

Unlike the spot check, where there is no time to prepare, with planned inspections the expectations are much greater. There is time for the management to get files ready - they even know which files will be examined; there is time to sort out which staff will speak to the inspectors and what they will say; and there is time to work out how the inspection timetable will operate.

All motivated in part by an unwritten desire to ensure that the inspectors won't come back any time soon. And if further truth be told, perhaps a desire by the inspectorate that they will not need to come back soon!

Unlike a conventional examination, where memory on the day plays a large part in achieving a good result, examination by inspection relies not so much on memory as on effective performance prior to inspection. That can be a great deal more demanding because it requires consistent performance, of the correct standard, over a much longer period - and by a large number of people.

In the case of the Probation inspectorate its careful and open preparation and production of a comprehensive account of what would be inspected had the, perhaps unintended, effect of piling on even more pressure.

As a probation board chair, my colleagues and I were not responsible for checking what was to be inspected, but for seeking to ensure that the management had done so.

But whatever one's role - being inspected directly or, as a Board, occupying that ambiguous territory between the inspected and the inspecting - preparing for it is a major burden. The pursuit of the holy grail of successful inspection is time-consuming, care-demanding - and a distraction from the day job.

Anticipation and preparation, though, are just one part of the challenge. It runs deeper than that. An opportunity to set out your stall in a way that you believe will put you in the best possible light is valuable in its own right. It is a means of testing your organisational clarity of purpose and priorities. But for Probation areas or court administrations, or UKBA facilities evidenced outcomes are what really matter.

Thus, detailed inspection sees through presentational gloss. It exposes weakness easily and thoroughly. It offers few opportunities to mask the truth. Such as the files that should have

been completed cumulatively, but were not. Such as the uncertainty among staff about their roles, and what training should have been given and when, and such as any other administrative inadequacies. All laid bare, with evidence for anyone to see. No hiding place; no justifiable assertions that it's not normally like that - 'you caught us on a bad day' - that might get through on a spot check.

As I was writing these observations, I was reflecting on how uncomfortable I may appear to have found the process and how deeply my experience of inspection has etched itself on my psyche. Well, yes, it was uncomfortable and the etching is deep.

That is because the probation area with which I was connected had, at one point, serious, not to say severe, performance problems. Therefore, it is hard to be entirely upbeat in my account, although I should make clear that for the sake of comprehensible narrative, the account is a montage, a conflation of a number of inspections spanning six years. So it has an intensity which is inverse proportion to the chronology which it reflects. Let me add also that the story had a relatively happy ending.

Many of the performance deficiencies which inspections revealed had improved significantly by the time I finished my stint. And my experience has convinced me, too, of the need to see inspection - planned or unannounced - as more of a consultancy service than as a mechanism simply to weed out weakness. That brings me to the second direction.

The independent spotting and exposing of inadequate practice is part of the process of promoting public confidence that state agencies will be held to account when they are found not to be doing what they should be doing; or doing it poorly.

That is what Parliament has said it wants. For you, as I have just mentioned that is section 48 of the UK Borders Act 2007. That is the given. But to my mind, the real interest lies in how you interpret and apply that duty. As you build your new inspection regime, you may conclude that the process of inspecting, of monitoring and reporting what you find is infinitely subtle.

For one thing, and self-evidently, inspection is not an end in itself. It is a means to end. With the Probation inspectorate it is a means of ensuring that everything possible is being done, and done well, to stop offenders re-offending. And for the courts inspectorate, it is a means of improving the experience of all people who use or work within them.

In your case, your purpose is to ensure that UKBA does everything it can, decently and efficiently to keep our borders safe and ensure that the people who live in, or who come to, the UK are here lawfully.

What I am suggesting, based on my experience of being inspected, is that no matter what your independent purpose, the relationship between an inspectorate and those whom it is inspecting has an interdependency.

That is not for a moment to understate your independence. As I also said a few minutes ago those whom you inspect do not have any option but to be inspected and to deal with the consequences. That is the law.

Nevertheless, I suggest that no matter how vigorous are your inspections, you are dependent on those you inspect to do something as result of them. Thus, they must have confidence in you; they must take your findings seriously and implement them enthusiastically, effectively and promptly. Or, at the very least, do so willingly.

The law can go so far. Making it work requires action. That is what I mean by interdependence. You need each other. So, alongside your job of inspecting is that, perhaps tougher, task of persuasion. The task of creating a climate where you could throw your

weight about - the Act implies that you can - but where you do not. You do not because you do not need to. You do not need to because you have shown that you see your relationship as one in which you share responsibility for improvement.

You present evidence which you have gathered in a courteous, open and structured way. You are willing patiently to discuss your findings and to suggest how they can be implemented. Whether your evidence is gathered from spot checks or from announced ones, your aim is to help to achieve improvement; not to ambush. A process I would describe as *fair engagement*.

Now, I recognise that two thoughts maybe passing through your minds. One thought: who is he to tell us our job? The second thought: he would say that wouldn't?

On the first, I hope you won't feel that I am telling you your job and that you will recognise that I speak simply as someone who has had a closer association with inspection than perhaps some others have had; and that that association has given me a chance to reflect at length on the process.

On the second: all I can say is that I speak as someone who has the enthusiasm of the convert, having initially been a sceptic. Someone who has moved from the position of regarding an inspection as something you have to live with - you grit your teeth and hope that it will be as painless as possible - to a position where I regard inspection, carried out fairly, honestly and constructively, as an essential component of the process of sustained improvement - and a contribution to the good order of our society.

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31st March 2009

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